

2 Am. Jur. 2d Admiralty Summary

American Jurisprudence, Second Edition | May 2021 Update

Admiralty

Jill Gustafson, J.D.

[Correlation Table](#)

Summary

Scope:

This topic covers the jurisdiction of, and the practice and procedure in, courts administering maritime law; the limits and subject matter of such jurisdiction; and matters as to causes of action, pleading, defenses, evidence, and appeal and review. To the extent not treated elsewhere, the jurisdictional and procedural aspects of a particular type of admiralty or maritime action are also addressed in this article.

Federal Aspects:

Admiralty law is comprised almost entirely of federal common law or statute, supplemented only by state law where the federal law does not address the particular issue raised.

Treated Elsewhere:

Abandoned or lost cargo, see [Am. Jur. 2d, Shipping §§ 645 to 708](#)

Aviation, as pertaining to use of maritime vessels, and admiralty jurisdiction in aviation accident cases, see [Am. Jur. 2d, Aviation § 190](#)

Canals, as navigable waters of United States, see [Am. Jur. 2d, Canals § 3](#)

Carriage of Goods by Sea Act, see [Am. Jur. 2d, Shipping §§ 568 to 574](#)

Construction contracts, as applied to maritime vessels, see [Am. Jur. 2d, Shipping § 22](#)

Criminal jurisdiction, including offenses committed on the high seas, and the special maritime and territorial jurisdiction of the United States, see [Am. Jur. 2d, Criminal Law §§ 447 to 450](#)

Equal-protection requirements, application to state and federal agencies, see [Am. Jur. 2d, Constitutional Law §§ 839, 843](#)

Federal Employees' Compensation Act, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 77 to 98](#)

Federal Employers' Liability Act, generally, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 1 to 28](#)

Federal Maritime Commission, see [Am. Jur. 2d, Shipping §§ 44, 590, 594, 649](#)

Food, admiralty procedure as applicable to proceedings for condemnation of adulterated or misbranded articles, see [Am. Jur. 2d, Food § 59](#)

International law, generally, see [Am. Jur. 2d, International Law §§ 1 et seq.](#)

Jones Act, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 29 to 47](#)

Licenses and permits in maritime matters, generally, see [Am. Jur. 2d, Boats and Boating §§ 23, 24](#); [Am. Jur. 2d, Shipping §§ 56, 95](#)

Longshore and Harbor Workers' Compensation Act, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 99 to 132](#)

Maintenance and cure of seamen, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts § 59](#); [Am. Jur. 2d, Shipping § 324](#)

Malicious mischief, destruction of buildings and property within maritime jurisdiction, see [Am. Jur. 2d, Malicious Mischief and Related Offenses § 11](#)

Marine insurance, see [Am. Jur. 2d, Insurance §§ 265 to 271, 346, 637 to 659, 816, 970, 1001, 1280 to 1305, 1520 to 1531, 1784, 2024](#)

Marshaling assets, remedy in admiralty court, see [Am. Jur. 2d, Marshaling Assets and Inverse Order of Alienation § 31](#)

Officers, see [Am. Jur. 2d, Shipping §§ 214 to 233](#)

Products liability, admiralty jurisdiction over actions, see [Am. Jur. 2d, Products Liability §§ 1512 to 1518](#)

Salvage, generally, see [Am. Jur. 2d, Salvage §§ 1 et seq.](#)

Small and large craft, relative rights of, see [Am. Jur. 2d, Boats and Boating § 2](#)

Vessels, generally, as to commercial vessels, see [Am. Jur. 2d, Shipping §§ 1 et seq.](#); as to pleasure boats, see [Am. Jur. 2d, Boats and Boating §§ 1 et seq.](#)

War, relationship to maritime vessels, see [Am. Jur. 2d, War §§ 72 to 116](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)

[All State Cases \(ALLSTATES\)](#)

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)
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2 Am. Jur. 2d Admiralty I A Refs.

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I. Origin and Basis of Admiralty Jurisdiction and Practice

A. In General; Bases of Law and Jurisdiction

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Research References

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1(.5), 1.5, 1.6, 1.20(1)

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A.L.R. Index, Admiralty

A.L.R. Index, Maritime Law

West's A.L.R. Digest, [Admiralty](#)  1(.5), 1.5, 1.6, 1.20(1)

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2 Am. Jur. 2d Admiralty § 1

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I. Origin and Basis of Admiralty Jurisdiction and Practice

A. In General; Bases of Law and Jurisdiction

§ 1. Nature of admiralty law

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The historical development of admiralty jurisdiction and procedure is of practical as well as theoretical interest since opinions in admiralty cases frequently refer to the historical background in reaching conclusions on the questions at issue.¹ The special jurisdiction of admiralty has a maritime purpose,² different from the common law,³ and the fundamental interest giving rise to maritime jurisdiction is the protection of maritime commerce.⁴ It is not exclusively rooted in the civil law system⁵ although it includes substantial derivations from it.⁶

It has a strong international aspect⁷ but may undergo independent changes in the several countries.⁸ Such international features are given serious consideration by admiralty courts.⁹ The law of admiralty does not seek to achieve uniformity of process beyond the rudimentary elements of procedural fairness since admiralty law is supposed to apply in all the courts of the world.¹⁰

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Footnotes

¹ [Romero v. International Terminal Operating Co.](#), 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959).

² [U.S. v. Matson Nav. Co.](#), 201 F.2d 610 (9th Cir. 1953).

³ [Mangone v. Moore-McCormack Lines, Inc.](#), 152 F. Supp. 848 (E.D. N.Y. 1957), adhered to on reargument, 1958 A.M.C. 2226, 1957 WL 87424 (E.D. N.Y. 1957).

⁴ [Norfolk Southern Railway Co. v. Kirby](#), 543 U.S. 14, 125 S. Ct. 385, 160 L. Ed. 2d 283 (2004).

⁵ [Mangone v. Moore-McCormack Lines, Inc.](#), 152 F. Supp. 848 (E.D. N.Y. 1957), adhered to on reargument, 1958 A.M.C. 2226, 1957 WL 87424 (E.D. N.Y. 1957).

- ⁶ New England Mut. Marine Ins. Co. v. Dunham, 78 U.S. 1, 20 L. Ed. 90, 1870 WL 12885 (1870).
- ⁷ Mangone v. Moore-McCormack Lines, Inc, 152 F. Supp. 848 (E.D. N.Y. 1957), adhered to on reargument, 1958 A.M.C. 2226, 1957 WL 87424 (E.D. N.Y. 1957).
- ⁸ Lauritzen v. Larsen, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953); The Lottawanna, 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874); The St. Lawrence, 66 U.S. 522, 17 L. Ed. 180, 1861 WL 7685 (1861).
- ⁹ Lauritzen v. Larsen, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953).
- ¹⁰ American Dredging Co. v. Miller, 510 U.S. 443, 114 S. Ct. 981, 127 L. Ed. 2d 285 (1994).

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2 Am. Jur. 2d Admiralty § 2

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I. Origin and Basis of Admiralty Jurisdiction and Practice

A. In General; Bases of Law and Jurisdiction

§ 2. Constitutional provisions

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1.6

Treatises and Practice Aids

As to jurisdiction of admiralty courts, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [[Westlaw®: Search Query](#)]

The specific foundation for admiralty jurisdiction in the federal courts is the provision of the U.S. Constitution that the judicial power of the United States shall extend to all cases “of admiralty and maritime jurisdiction.”¹

The Constitution fixes only the original jurisdiction of the Supreme Court as to admiralty cases, and Congress remains free to mold the scope of the federal courts’ admiralty jurisdiction as it pleases.² Moreover, the constitutional provision is not self-defining³ but presupposes a general system of maritime law and contemplates a body of law with uniform operation.⁴

The constitutional provision impliedly contains three grants: (1) it empowers Congress to confer admiralty and maritime jurisdiction on tribunals inferior to the Supreme Court; (2) it empowers the federal courts in their exercise of admiralty and maritime jurisdiction to draw on the substantive law inherent in that jurisdiction; and (3) it empowers Congress to revise and supplement the maritime law within the limits of the Constitution.⁵

The power to grant attachments in admiralty, i.e., maritime attachments, is an inherent component of admiralty jurisdiction given to the federal courts under Article III of the Constitution.⁶

CUMULATIVE SUPPLEMENT

Cases:

In maritime tort cases, the Supreme Court acts as a common-law court, subject to any controlling statutes enacted by Congress. [Air and Liquid Systems Corp. v. DeVries](#), 139 S. Ct. 986 (2019).

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Footnotes

- ¹ [U.S. Const. Art. III, § 2, cl. 1.](#)
- ² [Ventura Packers, Inc. v. F/V JEANINE KATHLEEN](#), 305 F.3d 913 (9th Cir. 2002).
- ³ [The St. Lawrence](#), 66 U.S. 522, 17 L. Ed. 180, 1861 WL 7685 (1861).
- ⁴ [The Thomas Barlum](#), 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934).
- ⁵ [Romero v. International Terminal Operating Co.](#), 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959).
- ⁶ [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).

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§ 3. Constitutional provisions—Commerce Clause

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Even in the absence of the clause giving admiralty and maritime jurisdiction to the federal courts,¹ the U.S. Constitution's Commerce Clause² would be a sufficient basis for federal admiralty power over some, but not all, matters of a maritime nature.³ Indeed, commerce, in terms of the Commerce Clause, includes navigation.⁴ However, it has been pointed out that the admiralty power of Congress and the admiralty jurisdiction of the federal courts are not limited to matters that fall within the scope of the Commerce Clause.⁵

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Footnotes

¹ [§ 2.](#)

² [U.S. Const. Art. I, § 8, cl. 3.](#)

³ [Old Dominion S.S. Co. v. Gilmore, 207 U.S. 398, 28 S. Ct. 133, 52 L. Ed. 264 \(1907\).](#)

⁴ [Brown v. State of Maryland, 25 U.S. 419, 6 L. Ed. 678, 1827 WL 3065 \(1827\).](#)

⁵ [London Guarantee & Accident Co. v. Industrial Accident Commission of California, 279 U.S. 109, 49 S. Ct. 296, 73 L. Ed. 632 \(1929\).](#)

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§ 4. Constitutional provisions—Cases in law and equity

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The U.S. Constitution extends the judicial power of the United States to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority.¹ However, the federal statute granting original jurisdiction to the federal courts in civil actions where the matter in controversy arises under the Constitution, laws, or treaties of the United States² does not extend to matters in admiralty arising under general maritime law.³ The cases that come within the jurisdiction of admiralty do so by virtue of a distinct and specific grant of judicial power; they are not embraced in the “cases in law and equity” referred to in the Constitution.⁴ Also, the fact that it was the Constitution that established maritime law as part of the law of the United States⁵ does not compel the conclusion that a civil action on a purely maritime claim is cognizable as one arising under the Constitution itself by means of the “cases in law and equity” provision.⁶

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Footnotes

¹ U.S. Const. Art. III, § 2, cl. 1.

² 28 U.S.C.A. § 1331.

³ *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959).

⁴ *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959).

⁵ § 1.

⁶ *Jordine v. Walling*, 185 F.2d 662 (3d Cir. 1950).

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§ 5. Congressional power

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[Construction and Application by U.S. Supreme Court of Necessary and Proper Clause of U.S. Constitution—U.S. Const. Art. I, s8, cl. 18, 65 A.L.R. Fed. 2d 161](#)

In view of the constitutional provision granting admiralty and maritime jurisdiction to the federal courts,¹and the provision authorizing the making of all laws necessary and proper for carrying into execution the powers vested in the government of the United States,²Congress retains superior authority in admiralty and maritime matters.³Congress also has the power to extend by legislation the applicability of maritime law to a territory, incorporated or unincorporated, which is not a state of the union.⁴

To the extent admiralty jurisdiction is fixed by the Constitution, its scope is beyond the range of congressional alteration.⁵However, in the absence of constitutional limitation, Congress has the power to make changes in admiralty law.⁶This legislative power of Congress extends to jurisdictional and procedural matters and to substantive admiralty law.⁷

The constitutional grant to Congress of the power to define and punish piracies and felonies committed on the high seas and offenses against the law of nations,⁸and to make rules concerning captures on land and water,⁹does not limit the Constitution's extension of the judicial power of the federal government to cases of admiralty and maritime jurisdiction.¹⁰Also, this power is not limited to the territorial waters of the United States or to the high seas as Congress may grant admiralty jurisdiction of crimes committed within the territorial waters of other nations if committed on vessels of the United States.¹¹

Observation:

The absence of federal legislation constraining punitive damages in maritime cases does not imply a congressional decision that there should be no quantified rule.¹²

CUMULATIVE SUPPLEMENT

Cases:

When exercising its inherent common-law authority, an admiralty court should look primarily to State and Federal legislative enactments for policy guidance. [The Dutra Group v. Batterton](#), 139 S. Ct. 2275 (2019).

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Footnotes

- ¹ § 2.
- ² U.S. Const. Art. I, § 8, cl. 18.
- ³ [Exxon Shipping Co. v. Baker](#), 554 U.S. 471, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008); [Swanson v. Marra Bros.](#), 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946); [O'Donnell v. Great Lakes Dredge & Dock Co.](#), 318 U.S. 36, 63 S. Ct. 488, 87 L. Ed. 596 (1943); [The Thomas Barlum](#), 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934).
- ⁴ [Guerrido v. Alcoa Steamship Co.](#), 234 F.2d 349 (1st Cir. 1956).
- ⁵ [The Thomas Barlum](#), 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934); [Crowell v. Benson](#), 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932); [Panama R. Co. v. Johnson](#), 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924); [North Pacific S.S. Co. v. Industrial Accident Commission of California](#), 174 Cal. 346, 163 P. 199 (1917).
- ⁶ [Crowell v. Benson](#), 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932).
- ⁷ [Panama R. Co. v. Johnson](#), 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924).
- ⁸ U.S. Const. Art. I, § 8, cl. 10.
- ⁹ U.S. Const. Art. I, § 8, cl. 11.
- ¹⁰ [United States v. Flores](#), 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086 (1933).
- ¹¹ [U. S. v. Rodgers](#), 150 U.S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893).
- ¹² [Exxon Shipping Co. v. Baker](#), 554 U.S. 471, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008).

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A. In General; Bases of Law and Jurisdiction

§ 6. Restrictions on state power

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1.20(1)

In view of the comprehensive grant of admiralty jurisdiction to the federal courts by the Constitution,¹ the states are without power to create or enforce any admiralty or maritime rule that conflicts with federal legislation, either directly or indirectly.²

As a logical consequence of the constitutional grant of admiralty jurisdiction, the law of admiralty as determined by the federal courts is controlling and may not be overridden by a state statute³ or a ruling of a state court.⁴ Furthermore, Congress cannot transfer its legislative power in admiralty matters to the states since by nature that power is nondelegable.⁵

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Footnotes

¹ §§ 2 to 4.

² Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 49 S. Ct. 88, 73 L. Ed. 232 (1928); Union Fish Co. v. Erickson, 248 U.S. 308, 39 S. Ct. 112, 63 L. Ed. 261 (1919); Berry v. M.F. Donovan & Sons, 120 Me. 457, 115 A. 250, 25 A.L.R. 1021 (1921).
As to when state law may be applied in an admiralty action, see §§ 91 to 94.

³ Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S. Ct. 368, 99 L. Ed. 337 (1955).

⁴ Compania Maritima Astra, S.A. v. Archdale, 134 N.Y.S.2d 20 (Sup 1954).

⁵ Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A.L.R. 1145 (1920).

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§ 7. Judicial development

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Decisions of the federal courts have played an important part in the development of American admiralty law,¹ and the Supreme Court has fashioned a large part of the existing rules that govern admiralty.² Federal common lawmaking in admiralty is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field of admiralty law.³ Indeed, in the absence of a controlling statute, some opinions of the Supreme Court speak of “judicially created” admiralty law⁴ and of “judiciary legislation.”⁵ Thus, admiralty law falls within a federal court’s jurisdiction to decide in the manner of a common-law court, subject to the authority of Congress to legislate otherwise if it disagrees with the judicial result.⁶

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Footnotes

- ¹ [A/S J Ludwig Mowinckels Rederi v. Commercial Stevedoring Co, 256 F.2d 227 \(2d Cir. 1958\).](#)
- ² [Wilburn Boat Co. v. Fireman’s Fund Ins. Co., 348 U.S. 310, 75 S. Ct. 368, 99 L. Ed. 337 \(1955\).](#)
- ³ [American Dredging Co. v. Miller, 510 U.S. 443, 114 S. Ct. 981, 127 L. Ed. 2d 285 \(1994\).](#)
- ⁴ [Bisso v. Inland Waterways Corp., 349 U.S. 85, 75 S. Ct. 629, 99 L. Ed. 911 \(1955\).](#)
- ⁵ [Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 \(1959\).](#)
- ⁶ [Exxon Shipping Co. v. Baker, 554 U.S. 471, 128 S. Ct. 2605, 171 L. Ed. 2d 570 \(2008\).](#)

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B. Courts Having Admiralty Jurisdiction

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B. Courts Having Admiralty Jurisdiction

§ 8. Generally

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West's Key Number Digest

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Under the provision of the U.S. Constitution that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction,¹ the courts that are entitled to exercise admiralty jurisdiction are determined according to federal law.² Congress has vested the whole of original admiralty jurisdiction in the federal district courts,³ so that state courts have no admiralty jurisdiction,⁴ although Congress has also enacted the saving to suitors clause,⁵ that reserves to the state courts concurrent jurisdiction with the federal admiralty courts where relief can be obtained by common law or state remedies in maritime causes.⁶ Ordinarily, neither the United States Supreme Court⁷ nor other federal appellate courts have original admiralty jurisdiction.⁸

CUMULATIVE SUPPLEMENT

Cases:

Nature of contract and dispute squarely implicated court's admiralty jurisdiction over breach of contract action brought by maritime insurer, the assignee of its insured's reimbursement for salvage costs incurred when two oil barges the insured owned and operated were grounded in the Mississippi River, against primary pollution liability insurer, which declined to reimburse plaintiff for costs; operative insurance agreement provided pollution liability insurance for plaintiff's barges and other vessels, and parties' dispute turned on applicability of policy to liability arising from marine incident on vital waterway for United States shipping. 28 U.S.C.A. § 1333(1). [Starr Indemnity & Liability Co. v. Water Quality Insurance Syndicate](#), 320 F. Supp. 3d 549 (S.D. N.Y. 2018).

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Footnotes

- ¹ § 2.
- ² *Roach v. Chapman*, 63 U.S. 129, 22 How. 129, 16 L. Ed. 291, 1859 WL 10634 (1859).
- ³ § 9.
- ⁴ *The City of Panama*, 101 U.S. 453, 25 L. Ed. 1061, 1879 WL 16723 (1879); *Penhallow v. Doane's Adm'rs*, 3 U.S. 54, 3 Dall. 54, 1 L. Ed. 507, 1795 WL 821 (1795).
- ⁵ 28 U.S.C.A. § 1333(1).
- ⁶ §§ 80 to 84.
- ⁷ *Ex parte Fassett*, 142 U.S. 479, 12 S. Ct. 295, 35 L. Ed. 1087 (1892).
- ⁸ *Governor of Georgia v. Madrazo*, 26 U.S. 110, 7 L. Ed. 73, 1828 WL 3005 (1828); *The Harrison*, 14 U.S. 298, 4 L. Ed. 95, 1816 WL 1745 (1816).

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B. Courts Having Admiralty Jurisdiction

§ 9. Federal district courts

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Congress has conferred original admiralty jurisdiction on the federal district courts,¹ whose jurisdiction is plenary and coextensive with the constitutional grant to the federal government of judicial power over this subject² but is separate and distinct from their “law side” jurisdiction.³

The legislation conferring admiralty jurisdiction has been the subject of various amendments, but the essential features of exclusive jurisdiction of admiralty and maritime causes, saving to suitors the right of a common-law remedy, as well as prize jurisdiction, are basically the powers conferred by the Judiciary Act of 1789.⁴ As it reads now, the statute provides that the federal district courts have original jurisdiction, exclusive of the courts of the states, of: (1) any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled; and (2) any prize brought into the United States, including proceedings for condemnation of property taken as a prize.⁵ With this statute, the constitutional authority of federal courts to hear cases in admiralty is codified by Congress.⁶

The admiralty jurisdiction of a United States district court has been said to be coextensive with the territorial boundaries of the state where the court sits.⁷

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Footnotes

¹ Langnes v. Green, 282 U.S. 531, 51 S. Ct. 243, 75 L. Ed. 520 (1931); Panama R. Co. v. Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924); The Pesaro, 255 U.S. 216, 41 S. Ct. 308, 65 L. Ed. 592 (1921); Misener Marine Const., Inc. v. Norfolk Dredging Co., 594 F.3d 832 (11th Cir. 2010); Krossa v. All Alaskan Seafoods, Inc., 37 P.3d 411 (Alaska 2001).

² Perry v. Haines, 191 U.S. 17, 24 S. Ct. 8, 48 L. Ed. 73 (1903); Providence & N. Y. S. S. Co. v. Hill Mfg. Co., 109 U.S. 578, 3 S. Ct. 379, 27 L. Ed. 1038 (1883); New England Mut. Marine Ins. Co. v. Dunham, 78 U.S. 1, 20 L. Ed. 90, 1870 WL 12885 (1870).

³ § 16.

⁴ *The Betsey*, 3 U.S. 6, 3 Dall. 6, 1 L. Ed. 485, 1794 WL 690 (1794).

⁵ 28 U.S.C.A. § 1333.

As to a discussion of the types of actions that fall within “admiralty and maritime jurisdiction,” see §§ 16 to 84.

⁶ *White v. U.S.*, 53 F.3d 43 (4th Cir. 1995).

⁷ *Inland Barge Co. v. Nabbitt*, 210 F. Supp. 690 (S.D. Ind. 1962).

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2 Am. Jur. 2d Admiralty § 10

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B. Courts Having Admiralty Jurisdiction

§ 10. Court of claims

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Congress has the power to decide which federal court has jurisdiction in maritime proceedings and pursuant to this power has given the U.S. Court of Federal Claims exclusive jurisdiction of certain maritime matters.¹ For example, wage claims of federal employees working aboard government vessels are within the jurisdiction of the court of federal claims under the Tucker Act and not within the exclusive jurisdiction of the federal district courts under the Suits in Admiralty Act.²

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Footnotes

¹ [The Samovar](#), 72 F. Supp. 574 (N.D. Cal. 1947).

² [Amell v. U.S.](#), 384 U.S. 158, 86 S. Ct. 1384, 16 L. Ed. 2d 445 (1966).
As to a discussion of the Suits in Admiralty Act and the jurisdiction conferred thereby, see §§ 96 to 99.
As to a discussion of the Tucker Act (28 U.S.C.A. § 1491), see [Am. Jur. 2d, Federal Courts § 1998](#).

2 Am. Jur. 2d Admiralty § 11

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§ 11. Territorial courts

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Although admiralty jurisdiction can be exercised only in those courts that are established pursuant to the U.S. Constitution,¹ the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and the state governments and may grant to a territorial legislature the power to create a court having admiralty jurisdiction.² Thus, under an act providing that the courts of a territory shall exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States, its courts have jurisdiction in admiralty.³

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Footnotes

¹ § 2.

² Ex parte Cooper, 143 U.S. 472, 12 S. Ct. 453, 36 L. Ed. 232, 1 Alaska Fed. 244 (1892); American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511, 7 L. Ed. 242, 1828 WL 2951 (1828).

³ The City of Panama, 101 U.S. 453, 25 L. Ed. 1061, 1879 WL 16723 (1879).

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2 Am. Jur. 2d Admiralty I C Refs.

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West's Key Number Digest, [Admiralty](#)  1(1), 1.20(1), 1.20(2), 6 to 9.1

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A.L.R. Index, Arbitration

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2 Am. Jur. 2d Admiralty § 12

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C. Divestiture of Admiralty Jurisdiction; Arbitration

§ 12. Judicial divestiture

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West's Key Number Digest

West's Key Number Digest, Admiralty  1(1), 6 to 9(15)

As a general rule, in the absence of a statute authorizing them to do so, parties may not oust a court of admiralty jurisdiction by private agreement.¹ If a contract is maritime and within admiralty jurisdiction, the parties may not oust the court of admiralty jurisdiction by means of an agreement which in effect declares the parties' intention to regard the contract as nonmaritime in nature.² Parties may, however, oust an admiralty court of the power to initially resolve a controversy by means of an arbitration agreement.³

The reduction of a foreign judgment on a maritime claim to a monetary award does not divest the award of its admiralty character, and thus, a district court has admiralty jurisdiction over an action to enforce the judgment where the prior judgment had been rendered by a competent court sitting in admiralty.⁴

Removal of the res at issue in an in rem proceeding does not necessarily divest the court of jurisdiction, but rather, once proper seizure establishes jurisdiction, the court maintains jurisdiction until litigation ends unless a judgment would be useless.⁵

Notwithstanding the fact that it has the effect of ousting a court from jurisdiction, admiralty courts will generally enforce a forum-selection clause by which the participants in a maritime contract agree in advance upon the forum to resolve disputes arising out of the contract.⁶

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Footnotes

¹ [American Sugar Refining Co. v. The Anaconda](#), 138 F.2d 765 (C.C.A. 5th Cir. 1943), judgment aff'd, 322 U.S. 42, 64 S. Ct. 863, 88 L. Ed. 1117 (1944).

² [Ocean Science & Engineering Inc. v. International Geomarine Corp.](#), 312 F. Supp. 825 (D. Del. 1970).

³ [Continental Chartering and Brokerage, Inc. v. T.J. Stevenson and Co., Inc.](#), 678 F. Supp. 58 (S.D. N.Y. 1987).
As to arbitration in admiralty proceedings, generally, see §§ [13](#) to [15](#).

⁴ [Vitol, S.A. v. Primerose Shipping Co. Ltd.](#), 708 F.3d 527 (4th Cir. 2013).

⁵ [Bargecarib Inc. v. Offshore Supply Ships Inc.](#), 168 F.3d 227 (5th Cir. 1999).

⁶ [M/S Bremen v. Zapata Off-Shore Co.](#), 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972).
As to forum-selection clauses, generally, and their effect upon a court's decision to retain or dismiss an action, see § [24](#).

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§ 13. Effect of arbitration agreement

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Treatises and Practice Aids

As to arbitration proceedings, generally, see Federal Procedure, L. Ed., Arbitration [\[Westlaw®: Search Query\]](#)

Forms

Forms relating to admiralty arbitration: see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Since the Federal Arbitration Act became effective,¹ the right to have arbitration thereunder in maritime and admiralty matters is recognized by admiralty courts.² Even before the Federal Arbitration Act, it was held that agreements to submit controversies to arbitration were valid in admiralty,³ that an arbitration award could be given effect in admiralty,⁴ that an executory arbitration agreement could be made a rule of court,⁵ and that a libel for damages would lie for breach of an executory arbitration agreement.⁶ Such an agreement, whether executory or executed, could not be enforced in admiralty by specific performance, however, because of the admiralty court's lack of power to grant equitable relief, and an executory arbitration agreement could not be given effect as a bar to a libel on the original cause of action.⁷

A vessel owner does not waive its right to pursue judicial remedies in admiralty by demanding arbitration in a dispute; an agreement to arbitrate does not oust a federal court of jurisdiction and although the parties had agreed to arbitrate, traditional

admiralty procedure with its concomitant security should be available to an aggrieved party.⁸

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¹ § 14.

² American Sugar Refining Co. v. The Anaconda, 138 F.2d 765 (C.C.A. 5th Cir. 1943), judgment aff'd, 322 U.S. 42, 64 S. Ct. 863, 88 L. Ed. 1117 (1944).

³ Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924); U. S. v. Farragut, 89 U.S. 406, 22 L. Ed. 879, 1874 WL 17451 (1874).

⁴ Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924).

⁵ Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924).

⁶ Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924); U. S. v. Farragut, 89 U.S. 406, 22 L. Ed. 879, 1874 WL 17451 (1874); The Lottawanna, 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874).

⁷ Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924).

⁸ Reefer Exp. Lines Pty., Ltd. v. Petmovar, S. A., 420 F. Supp. 16 (S.D. N.Y. 1976).

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C. Divestiture of Admiralty Jurisdiction; Arbitration

§ 14. Effect of arbitration agreement—Federal Arbitration Act

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1(1)

The Federal Arbitration Act provides that a written provision in any maritime transaction or contract involving commerce, for settlement by arbitration of a controversy arising out of the contract or transaction or out of a refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, is valid, irrevocable, and enforceable, save on grounds that exist at law or in equity for revocation of any contract.¹ It further provides that a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under U.S.C.A. Title 28 in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties for an order directing that arbitration proceed in the manner provided for in the agreement.²

If the basis of jurisdiction is a cause of action otherwise justiciable in admiralty, then, notwithstanding anything in the act to the contrary, the party claiming to be aggrieved may begin his or her proceeding by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court has jurisdiction to direct the parties to proceed with the arbitration and retains jurisdiction to enter its decree on the award.³ The purpose of this provision is to allow an aggrieved party the benefit of the security obtainable in an admiralty procedure,⁴ but the parties to an agreement to arbitrate have the choice to enforce arbitration in an admiralty case without libel and seizure.⁵

The parties still have the right to institute a proceeding in the admiralty court in the traditional manner, but their obligation to arbitrate a dispute rather than have its merits litigated will be enforced by the admiralty court in the manner prescribed in the statute.⁶

Practice Tip:

For reasons more historical than logical, an order denying a stay pending arbitration in a proceeding in admiralty is not an appealable order although such an order in an action at law is appealable.⁷

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Footnotes

- ¹ 9 U.S.C.A. § 2.
As to a general discussion of the Federal Arbitration Act, see [Am. Jur. 2d, Alternative Dispute Resolution § 17](#).
- ² 9 U.S.C.A. § 4.
- ³ 9 U.S.C.A. § 8.
- ⁴ [Theofano Maritime Co., Ltd. v. 9,551.19 Long Tons of Chrome Ore on Board The Aliakmon](#), 122 F. Supp. 853 (D. Md. 1954).
- ⁵ [The Anaconda v. American Sugar Refining Co.](#), 322 U.S. 42, 64 S. Ct. 863, 88 L. Ed. 1117 (1944); [Farr & Co. v. Cia. Intercontinental De Navegacion De Cuba, S. A.](#), 243 F.2d 342 (2d Cir. 1957).
- ⁶ [The Anaconda v. American Sugar Refining Co.](#), 322 U.S. 42, 64 S. Ct. 863, 88 L. Ed. 1117 (1944).
- ⁷ [W. R. Grace & Co. v. Trawler Crustamar](#), 571 F.2d 318 (5th Cir. 1978).

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C. Divestiture of Admiralty Jurisdiction; Arbitration

§ 15. Effect of arbitration agreement—State arbitration statutes

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1.20(1), 1.20(2)

As a general rule, a state arbitration statute is not applicable in admiralty, arbitration being a procedural matter.¹ However, for the same reason, a state arbitration statute authorizing enforcement of arbitration agreements may, despite the maritime nature of the cause of action, be applied in a state court under the saving to suitors clause.²

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Footnotes

¹ [Atlantic Fruit Co. v. Red Cross Line](#), 5 F.2d 218 (C.C.A. 2d Cir. 1924).
As to whether an arbitration agreement can divest an admiralty court of jurisdiction, see [§ 12](#).

² [Madriga v. Superior Court of State of Cal. in and for San Diego County](#), 346 U.S. 556, 74 S. Ct. 298, 98 L. Ed. 290 (1954).
As to jurisdiction under the saving to suitors clause, see §§ [80](#) to [84](#).

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A. Nature of Admiralty Jurisdiction

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II. Jurisdiction of Admiralty Courts

A. Nature of Admiralty Jurisdiction

§ 16. Admiralty jurisdiction as separate

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1(1)

Forms

Forms relating to maritime or admiralty jurisdiction, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Although admiralty is a separate jurisdiction, the admiralty courts are not separate judicial bodies; Congress has vested original jurisdiction in admiralty and maritime causes in the federal district courts.¹ However, a federal court cannot at the same time and in the same cause sit both as a court of law and as a court of admiralty.² Those jurisdictions are as distinct from each other as if they were vested in different tribunals.³ Thus, admiralty jurisdiction embraces a class of litigation entirely separate and distinct from those cases commonly described as presenting a federal question.⁴

Caution:

The distinction between admiralty and such other bases of federal jurisdiction as diversity or federal question jurisdiction does not prevent a plaintiff from seeking resolution of its claim under the saving to suitors clause by invoking diversity jurisdiction rather than admiralty jurisdiction.⁵

The distinction is important since, unlike common-law cases, admiralty cases are ordinarily tried without a jury.⁶ Furthermore, the district court sitting as an admiralty court has general jurisdiction of all causes of admiralty and maritime jurisdiction, without reference to the sum or value of the matter in controversy, or to diversity of citizenship.⁷

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Footnotes

- ¹ § 9.
- ² *Mangone v. Moore-McCormack Lines, Inc.*, 152 F. Supp. 848 (E.D. N.Y. 1957), adhered to on reargument, 1958 A.M.C. 2226, 1957 WL 87424 (E.D. N.Y. 1957).
- ³ *The Sarah*, 21 U.S. 391, 5 L. Ed. 644, 1823 WL 2459 (1823).
- ⁴ *Becker v. Crounse Corp.*, 822 F. Supp. 386 (W.D. Ky. 1993).
- ⁵ § 80.
- ⁶ § 187.
- ⁷ *Levinson v. Deupree*, 345 U.S. 648, 73 S. Ct. 914, 97 L. Ed. 2d 1319 (1953); *The Genesee Chief*, 53 U.S. 443, 12 How. 443, 13 L. Ed. 1058, 1851 WL 6623 (1851).

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A. Nature of Admiralty Jurisdiction

§ 17. Admiralty jurisdiction as exclusive

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Federal courts have exclusive jurisdiction in admiralty in rem actions.¹The proceedings must begin and be carried out in rem,²such as where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien.³

However, federal court jurisdiction over admiralty cases is not entirely exclusive.⁴There are exceptions to exclusivity, as in cases invoking the saving to suitors clause,⁵and cases in which Congress has recognized the concurrent jurisdiction of other federal courts to entertain actions for the enforcement of maritime rights.⁶Even where, under present legislation, admiralty jurisdiction is not exclusive, Congress has the power to make it exclusive.⁷

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Footnotes

¹ [American Dredging Co. v. Miller](#), 510 U.S. 443, 114 S. Ct. 981, 127 L. Ed. 2d 285 (1994); [Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel](#), 657 F.3d 1159 (11th Cir. 2011), cert. denied, 132 S. Ct. 2379, 182 L. Ed. 2d 1051 (2012) and cert. denied, 132 S. Ct. 2380 (2012) and cert. denied, 132 S. Ct. 2380, 182 L. Ed. 2d 1051 (2012).

As to when proceedings in rem are available, see §§ 28 to 30.

² [In re Millenium Seacarriers, Inc.](#), 419 F.3d 83 (2d Cir. 2005); [Coronel v. AK Victory](#), 2014 WL 820270 (W.D. Wash. 2014).

³ [Coronel v. AK Victory](#), 2014 WL 820270 (W.D. Wash. 2014).

⁴ [Cammon v. City of New York](#), 95 N.Y.2d 583, 721 N.Y.S.2d 579, 744 N.E.2d 114 (2000).
As to the divestiture of admiralty court jurisdiction by certain proceedings, see §§ 12 to 15.

⁵ §§ 80 to 84.

⁶ Swanson v. Marra Bros., 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946); *The Belfast*, 74 U.S. 624, 19 L. Ed. 266, 1868 WL 11126 (1868).

⁷ *The Moses Taylor*, 71 U.S. 411, 18 L. Ed. 397, 1866 WL 9470 (1866).

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A. Nature of Admiralty Jurisdiction

§ 18. Admiralty jurisdiction as limited

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Admiralty is a limited jurisdiction,¹ depending for its existence on whether or not the cause involved is an admiralty or maritime matter.² There is no statutory definition of admiralty jurisdiction³ and difficulties attend every attempt to define its exact limits.⁴ The extent of the admiralty jurisdiction, as conferred by the U.S. Constitution, is not limited by the scope of admiralty jurisdiction as it existed under English law,⁵ nor was it extended as far as the admiralty jurisdiction then reached in the civil law countries.⁶

The scope of admiralty jurisdiction in the United States is to be determined in the light of the Constitution, the laws of Congress, and the decisions of the Supreme Court.⁷ The federal courts, and particularly, in the final analysis, the Supreme Court, are the sole judges of the scope of their admiralty jurisdiction though they are governed in that determination by the applicable legislation.⁸

CUMULATIVE SUPPLEMENT

Cases:

General maritime law claims are not removable under federal admiralty jurisdictional statute as part of the original jurisdiction of the court, and require an independent basis of jurisdiction. 28 U.S.C.A. §§ 1333, 1441(a). [Gregoire v. Enterprise Marine Services, LLC](#), 38 F. Supp. 3d 749 (E.D. La. 2014).

[END OF SUPPLEMENT]

Footnotes

- ¹ Grace v. American Cent. Ins. Co., 109 U.S. 278, 3 S. Ct. 207, 27 L. Ed. 932 (1883); McMichael v. Falls City Towing Co., 199 F. Supp. 2d 632 (W.D. Ky. 2002).
- ² Lehigh Valley R. Co. v. Cornell Steamboat Co., 218 U.S. 264, 31 S. Ct. 17, 54 L. Ed. 1039 (1910).
As to the subject matter jurisdiction of admiralty courts, see §§ 45 to 79.
- ³ Sound Marine & Machine Corporation v. Westchester County, 100 F.2d 360 (C.C.A. 2d Cir. 1938).
- ⁴ Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950).
- ⁵ The Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934).
- ⁶ The Lottawanna, 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874); The Belfast, 74 U.S. 624, 19 L. Ed. 266, 1868 WL 11126 (1868).
- ⁷ Ex parte Easton, 95 U.S. 68, 24 L. Ed. 373, 1877 WL 18549 (1877); New England Mut. Marine Ins. Co. v. Dunham, 78 U.S. 1, 20 L. Ed. 90, 1870 WL 12885 (1870).
- ⁸ The Roanoke, 189 U.S. 185, 23 S. Ct. 491, 47 L. Ed. 770 (1903); The Lottawanna, 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874).

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A. Nature of Admiralty Jurisdiction

§ 19. Powers in equity; admiralty cases

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A court sitting in admiralty may use equitable principles, where appropriate, to avoid injustice,¹ and admiralty courts are authorized to grant equitable relief,² including issuing injunctions.³ Moreover, a district court can enforce and punish with its contempt powers willful violations of its order.⁴

The district court has wide discretion in determining whether equitable relief in admiralty cases is appropriate.⁵

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Footnotes

- ¹ [Schoenamsgruber v. Hamburg American Line](#), 294 U.S. 454, 55 S. Ct. 475, 79 L. Ed. 989 (1935); [Allied Maritime, Inc. v. Descatrade SA](#), 620 F.3d 70 (2d Cir. 2010); [Key Bank of Washington v. Southern Comfort](#), 106 F.3d 1441 (9th Cir. 1997).
- ² [Vaughan v. Atkinson](#), 369 U.S. 527, 82 S. Ct. 997, 8 L. Ed. 2d 88 (1962).
- ³ [Farrell Lines Inc. v. Ceres Terminals Inc.](#), 161 F.3d 115 (2d Cir. 1998).
- ⁴ [Columbus-America Discovery Group v. Atlantic Mut. Ins. Co.](#), 203 F.3d 291 (4th Cir. 2000).
- ⁵ [Mullane v. Chambers](#), 438 F.3d 132 (1st Cir. 2006).

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2 Am. Jur. 2d Admiralty § 20

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II. Jurisdiction of Admiralty Courts

B. Discretionary and Supplemental Admiralty Jurisdiction

§ 20. Discretionary jurisdiction

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In certain cases where admiralty courts have jurisdiction, it is discretionary with them whether or not they should exercise that jurisdiction.¹ This is the case, for example, in actions between foreigners, where the doctrine of forum non conveniens may be applied² or where it is clear that the foreigners have agreed to submit their dispute to the jurisdiction of a foreign court.³

The exercise of jurisdiction is discretionary where a ship voluntarily enters the territorial limits of a country and subjects itself to the laws and jurisdiction of that country.⁴ An admiralty court also may dismiss an action against a vessel for failure to obtain in rem jurisdiction despite the fact that the court has discretion to let the action lay dormant until attachment of the vessel is obtained.⁵

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Footnotes

¹ [Langnes v. Green](#), 282 U.S. 531, 51 S. Ct. 243, 75 L. Ed. 520 (1931).

² §§ [22](#) to [25](#).

³ [Koupetoris v. Konkar Intrepid Corp.](#), 402 F. Supp. 951, 21 Fed. R. Serv. 2d 119 (S.D. N.Y. 1975), judgment aff'd, 535 F.2d 1392 (2d Cir. 1976).

⁴ [Spector v. Norwegian Cruise Line Ltd.](#), 356 F.3d 641 (5th Cir. 2004), rev'd on other grounds, 545 U.S. 119, 125 S. Ct. 2169, 162 L. Ed. 2d 97 (2005).

⁵ [Vanol USA, Inc. v. M/T CORONADO](#), 663 F. Supp. 79 (S.D. N.Y. 1987).

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2 Am. Jur. 2d Admiralty § 21

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§ 21. Supplemental jurisdiction

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A federal court may exercise supplemental jurisdiction over related claims when the court has admiralty jurisdiction over the original claim.¹

Conversely, a maritime tort claim may be asserted in federal court without invoking the court's admiralty jurisdiction if the claim falls within the court's supplemental jurisdiction.²

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¹ [Robert E. Blake Inc. v. Excel Environmental](#), 104 F.3d 1158 (9th Cir. 1997); [In re Aramark Leisure Services](#), 523 F.3d 1169 (10th Cir. 2008).

Claims alleging negligent performance of contracts to procure marine insurance and to survey a fishing vessel's condition and value were not within federal admiralty jurisdiction where the alleged torts did not occur on navigable waters and were not caused by a vessel on those waters; however, since the plaintiff was also claiming that the contracts were breached, and those claims were within admiralty jurisdiction, the court would exercise supplemental jurisdiction over the tort claims. [Dao v. Knightsbridge Intern. Reinsurance Corp.](#), 15 F. Supp. 2d 567 (D.N.J. 1998). As to supplemental jurisdiction, generally, see [Am. Jur. 2d, Federal Courts](#) §§ 600 to 607.

² [Murphy v. Florida Keys Elec. Co-op. Ass'n, Inc.](#), 329 F.3d 1311 (11th Cir. 2003).

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2 Am. Jur. 2d Admiralty § 22

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§ 22. Forum non conveniens doctrine in admiralty cases

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[Effect of American citizenship or residency of libellant who has alternate forum abroad on applicability of doctrine of forum non conveniens in admiralty action brought in United States District Court, 70 A.L.R. Fed. 875](#)

Treatises and Practice Aids

As to declining jurisdiction under forum non conveniens doctrine, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [\[Westlaw®: Search Query\]](#)

The federal doctrine of forum non conveniens applies only in cases where the alternative forum is abroad.¹The fact that an action is one in admiralty will not alter the general forum non conveniens analysis to be conducted by the court.²A case should not be dismissed on grounds of forum non conveniens if federal maritime law applies to the case.³

Observation:

It has been said that an arbitration agreement is a specialized kind of forum-selection clause and that an admiralty court should give full effect to forum-selection clauses; indeed, such clauses are tantamount to consent to jurisdiction in personam.⁴



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- ¹ [American Dredging Co. v. Miller](#), 510 U.S. 443, 114 S. Ct. 981, 127 L. Ed. 2d 285 (1994).
As to the doctrine of forum non conveniens, generally, see [Am. Jur. 2d, Courts §§ 115 to 128](#).
- ² [Andros Compania Maritima S.A. v. Intertanker Ltd.](#), 714 F. Supp. 669 (S.D. N.Y. 1989).
- ³ [Vasquez v. YII Shipping Co., Ltd.](#), 692 F.3d 1192 (11th Cir. 2012).
As to choice of law in admiralty actions, see §§ [85 to 94](#).
- ⁴ [Maritime Ventures Intern., Inc. v. Caribbean Trading & Fidelity, Ltd.](#), 689 F. Supp. 1340 (S.D. N.Y. 1988).
As to arbitration as divesting a court of admiralty jurisdiction, see §§ [13 to 15](#).

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§ 23. Claim of American citizen

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[Effect of American citizenship or residency of libelant who has alternate forum abroad on applicability of doctrine of forum non conveniens in admiralty action brought in United States District Court, 70 A.L.R. Fed. 875](#)

[Validity or enforceability, under Carriage of Goods by Sea Act \(46 USC secs. 1300 et seq.\), of clauses in bill of lading or shipping contract as to jurisdiction of foreign courts or applicability of foreign law, 2 A.L.R. Fed. 963](#)

Although the Supreme Court has not passed on the general question of whether an American admiralty court may decline jurisdiction of a libel brought by a United States citizen, it has stated that the application of the doctrine of forum non conveniens to a suit by an American citizen against a foreign respondent brings into force considerations that differ from those in suits between foreigners and that it is improper to remit a citizen of the United States to the courts of a foreign country without assuring the citizen that the respondent will appear in those courts and that the libelant will thereby be given security equal to that obtainable by attachment in the American court.¹ A defendant in an admiralty action seeking to dismiss on the grounds of forum non conveniens must establish oppressiveness and vexation out of all proportion to the plaintiff's convenience, and differences in the system of adjudication are not, in and of themselves, sufficient to indicate an inadequate forum in another country; however, the mere fact that a United States court would have to apply foreign law would not justify dismissing an action where trial in the United States would be more convenient than in a foreign location, and the vessel is located in the United States.²

The proper standard in determining whether to dismiss an admiralty action brought by an American resident on the grounds of forum non conveniens is based on the factors listed in the *Gulf Oil v. Gilbert* case.³ And the current trend of decisions holds that the American citizenship of the libelant does not preclude dismissal on the grounds of forum non conveniens⁴ but that the status of the parties is an important factor which must be considered; and while a United States citizen does not have an

absolute right to have the case tried in federal court, his or her election of a forum should not be disregarded in the absence of persuasive evidence that the retention of jurisdiction will result in manifest injustice to the respondent.⁵

To insure that the rights of the libellant are preserved, a court, in dismissing an action brought by an American citizen, on the ground of forum non conveniens, may attach conditions, such as requiring that the defendant agree to submit to the jurisdiction of the foreign forum, to execute a letter of guaranty that the foreign judgment will be satisfied,⁶ not to raise jurisdictional defenses, such as the statute of limitations or laches or, in a tort action, to only try the issue of damages and not contest liability.⁷

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- ¹ [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 \(1950\).](#)
- ² [Cliffs-Neddrill Turnkey International-Oranjestad v. M/T Rich Duke, 734 F. Supp. 142 \(D. Del. 1990\).](#)
- ³ [Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 \(1947\), discussed in Am. Jur. 2d, Federal Courts § 1360.](#)
- ⁴ [Alcoa S. S. Co., Inc. v. M/V Nordic Regent, 654 F.2d 147, 70 A.L.R. Fed. 847 \(2d Cir. 1980\); Contact Lumber Co. v. P.T. Moges Shipping Co. Ltd., 918 F.2d 1446 \(9th Cir. 1990\).](#)
- ⁵ [Mobil Tankers Co., S. A. v. Mene Grande Oil Co., 363 F.2d 611, 10 Fed. R. Serv. 2d 1247 \(3d Cir. 1966\).](#)
- ⁶ [Alcoa S. S. Co., Inc. v. M/V Nordic Regent, 654 F.2d 147, 70 A.L.R. Fed. 847 \(2d Cir. 1980\) \(quoting from the conditions in the trial judge's order\).](#)
- ⁷ [Pain v. United Technologies Corp., 637 F.2d 775 \(D.C. Cir. 1980\).](#)

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§ 24. Effect of forum-selection clause

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A forum-selection clause is enforceable against an American plaintiff even in in rem proceedings. An admiralty court must consider the forum-selection clause to be prima facie valid and should enforce it unless the resisting party shows that the clause is unreasonable under the circumstances or is invalid for such reasons as fraud or overreaching.¹

Dismissal, on forum non conveniens grounds, is warranted, even though both the plaintiff and the defendant indicate a willingness to waive the forum-selection clause in the underlying contract where the entire action can be resolved in the forum indicated by the forum-selection clause.²

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¹ [M/S Bremen v. Zapata Off-Shore Co.](#), 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972).
As to the validity of such clauses under a provision of the Carriage of Goods by Sea Act, see [Am. Jur. 2d, Shipping § 651](#).

² [Vogt-Nem, Inc. v. M/V Tramper](#), 263 F. Supp. 2d 1226 (N.D. Cal. 2002).

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§ 25. Nonresident parties; discretion of court

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At least where no interest of an American citizen is involved, an American admiralty court may, in the sound exercise of its discretion, decline jurisdiction by applying the doctrine of forum non conveniens or accept jurisdiction and refuse to apply that doctrine.¹ However, this discretion is not to be exercised arbitrarily.² The court will refuse to proceed if for any reason judicial wisdom so dictates,³ as where assumption of jurisdiction appears inadvisable on grounds of international comity,⁴ with particular consideration as to whether a failure of justice would result from the refusal to assume jurisdiction.⁵ The fact that the foreigners involved are not subjects of the same nation, but belong to different countries, may also have a substantial bearing.⁶

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- ¹ [Romero v. International Terminal Operating Co.](#), 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959); [Lauritzen v. Larsen](#), 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953); [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950).
- ² [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950).
- ³ [Panama R. Co. v. Napier Shipping Co.](#), 166 U.S. 280, 17 S. Ct. 572, 41 L. Ed. 1004 (1897).
The court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum. [Langnes v. Green](#), 282 U.S. 531, 51 S. Ct. 243, 75 L. Ed. 520 (1931).
- ⁴ [The Maggie Hammond](#), 76 U.S. 435, 19 L. Ed. 772, 1869 WL 11555 (1869).
- ⁵ [Royal Mail Steam Packet Co. v. Companhia de Navegacao Lloyd Brasileiro](#), 27 F.2d 1002 (E.D. N.Y. 1928).

⁶ [The Belgenland, 114 U.S. 355, 5 S. Ct. 860, 29 L. Ed. 152 \(1885\).](#)

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1. Types of Proceedings in Admiralty; in Personam and in Rem

§ 26. Distinction between in rem and in personam proceeding

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Treatises and Practice Aids

As to in personam or in rem proceedings, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

An admiralty proceeding in personam has been described as a proceeding where one is charged personally with respect to some matter of admiralty and maritime jurisdiction.¹In an admiralty proceeding in rem, a person is not made a party defendant, but a vessel or other thing is seized and treated as the defendant,²and a decision is sought against the res rather than its owner.³A judgment in an in rem admiralty action is said to be good “against all the world.”⁴

The holder of a maritime lien may bring suit on the lien in rem or in personam.⁵Where a claim does not create a maritime lien, however, the claim must be pursued in personam.⁶

Observation:

Although the signature of an agent of a vessel may confer in rem jurisdiction over the vessel once it sets sail with the cargo, it does not confer in personam jurisdiction over the vessel's owner. The signature of an agent of a vessel may confer in personam jurisdiction over the vessel owner only if there is an indication that the owner gave actual or apparent authority to a particular agent to sign on its behalf and that the agent then signed the bill of lading.⁷

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Footnotes

- ¹ The SABINE, 101 U.S. 384, 25 L. Ed. 982, 1879 WL 16728 (1879).
- ² The SABINE, 101 U.S. 384, 25 L. Ed. 982, 1879 WL 16728 (1879); The Maggie Hammond, 76 U.S. 435, 19 L. Ed. 772, 1869 WL 11555 (1869); The Moses Taylor, 71 U.S. 411, 18 L. Ed. 397, 1866 WL 9470 (1866).
The rule of nonsurvivability of causes of action is not applicable to causes of action in rem. *Just v. Chambers*, 312 U.S. 383, 312 U.S. 668, 61 S. Ct. 687, 85 L. Ed. 903 (1941).
- ³ *Jennings v. Carson*, 8 U.S. 2, 2 L. Ed. 531, 1807 WL 1252 (1807).
- ⁴ *C.J. Hendry Co. v. Moore*, 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943); *Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1915); *In re Millenium Seacarriers, Inc.*, 419 F.3d 83 (2d Cir. 2005).
- ⁵ *USL Capital v. New York* 30, 975 F. Supp. 382 (D. Mass. 1996).
- ⁶ *Hunley v. Ace Maritime Corp.*, 927 F.2d 493 (9th Cir. 1991).
- ⁷ *The Rice Company (Suisse), S.A. v. Precious Flowers Ltd.*, 523 F.3d 528 (5th Cir. 2008).

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1. Types of Proceedings in Admiralty; in Personam and in Rem

§ 27. When proceeding in personam available

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Forms

Forms relating to in personam jurisdiction, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[\[Westlaw® Search Query\]](#)

In personam proceedings are available whenever civil proceedings are available in federal district court.¹In certain cases, the libelant may proceed either in rem or in personam.²

A plaintiff may bring an in personam maritime claim in (1) federal court under the federal court's admiralty jurisdiction, (2) federal court under the federal court's diversity jurisdiction, or (3) state court.³

Observation:

It has been a longstanding fiction of admiralty that a vessel may be assumed to be a person for the purpose of filing suit and enforcing judgment. One purpose of the fiction was to allow actions against ships when the owners could not be reached, and the fiction can still be useful for this purpose.⁴

Practice Tip:

An admiralty court, using its equitable powers, may award an in personam judgment against a property owner, previously only subject to an in rem action, when the security posted is insufficient to cover the damages incurred.⁶

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Footnotes

- ¹ [Supplemental Admiralty and Maritime Claims Rule A.](#)
As to how in personam jurisdiction is acquired in an admiralty action, see [§ 125](#).
- ² [§ 26](#).
- ³ [Ramirez v. Butler, 319 F. Supp. 2d 1034 \(N.D. Cal. 2004\).](#)
As to in personam jurisdiction in state court under the saving to suitors clause, see [§ 82](#).
- ⁴ [Continental Grain Co. v. The FBL-585, 364 U.S. 19, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 \(1960\); Luera v. M/V Alberta, 635 F.3d 181 \(5th Cir. 2011\).](#)
- ⁵ [Continental Grain Co. v. The FBL-585, 364 U.S. 19, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 \(1960\).](#)
- ⁶ [Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA, 671 F. Supp. 2d 753 \(D. Md. 2009\).](#)
As to a court's equitable powers under admiralty jurisdiction, see [§ 19](#).

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§ 28. When proceeding in rem available

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Forms

Forms relating to in rem jurisdiction, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

An action in rem may be brought to enforce any maritime lien or whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.¹

Subject to the requirement that a claimant have a maritime lien,² a proceeding in rem may be resorted to in connection with any matter that is within the scope of admiralty jurisdiction, such as a claim arising from a contract of affreightment;³ a claim for materials, supplies, or repairs furnished a ship;⁴ a general average claim;⁵ a salvage claim;⁶ a seaman's claim for wages;⁷ or a claim arising from any maritime tort,⁸ including a cause of action for personal injury.⁹

To be a defendant in an admiralty proceeding, the res need not be a tangible thing but may, for example, be freight money alleged by the libellant to be due under a charter party.¹⁰

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Footnotes

¹ Supplemental Admiralty and Maritime Claims Rule C(1).

2 § 30.

3 The Keokuk, 76 U.S. 517, 19 L. Ed. 744, 1869 WL 11537 (1869); The Belfast, 74 U.S. 624, 19 L. Ed. 266, 1868 WL 11126 (1868); The Eddy, 72 U.S. 481, 18 L. Ed. 486, 1866 WL 9371 (1866).

As to a lien arising pursuant to a contract of affreightment, generally, see Am. Jur. 2d, Shipping §§ 212, 213.

4 North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co., 249 U.S. 119, 39 S. Ct. 221, 63 L. Ed. 510 (1919); The Lottawanna, 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874) (supplies furnished in home port); Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F.3d 864 (11th Cir. 2010) (repairs).

As to the rights, powers, duties, and liabilities of officers and pilots to procure supplies, repairs, services, and advances to a ship, see § 198.

As to a lien arising pursuant to a contract of repair, generally, see Am. Jur. 2d, Shipping §§ 461, 465 to 467.

5 Dupont De Nemours & Co. v. Vance, 60 U.S. 162, 19 How. 162, 15 L. Ed. 584, 1856 WL 8712 (1856).

As to a lien arising pursuant to a general average claim, generally, see Am. Jur. 2d, Shipping § 766.

6 The SABINE, 101 U.S. 384, 25 L. Ed. 982, 1879 WL 16728 (1879); The Sybil, 17 U.S. 98, 4 L. Ed. 522, 1819 WL 2189 (1819).

A salvor's in rem admiralty action was not barred by U.S. Const. Amend. XI where the plaintiff claimed an ownership interest in a vessel under the law of finds and sought to enforce its lien against the ship under the laws of maritime salvage, and thus, the action was a genuine admiralty in rem action against property, and the plaintiff did not specifically name a state or state agency as a party. *Sindia Expedition, Inc. v. Wrecked and Abandoned Vessel, Known as The Sindia*, 895 F.2d 116, 15 Fed. R. Serv. 3d 1236 (3d Cir. 1990).

7 Leon v. Galceran, 78 U.S. 185, 20 L. Ed. 74, 1870 WL 12837 (1870).

As to a lien arising pursuant to a wages claim, see Am. Jur. 2d, Shipping § 463.

8 The City of Panama, 101 U.S. 453, 25 L. Ed. 1061, 1879 WL 16723 (1879); The Clarita, 90 U.S. 1, 23 L. Ed. 146, 23 L. Ed. 150, 1874 WL 17369 (1874).

As to when a tort is a "maritime tort" so as to confer subject matter jurisdiction on an admiralty court, see §§ 68, 69.

9 The ANACES, 93 F. 240 (C.C.A. 4th Cir. 1899); Luera v. M/V Alberta, 635 F.3d 181 (5th Cir. 2011).

10 U.S. v. Freights, etc., of the Mount Shasta, 274 U.S. 466, 47 S. Ct. 666, 71 L. Ed. 1156 (1927).

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1. Types of Proceedings in Admiralty; in Personam and in Rem

§ 29. When proceeding in rem available—Presence of res in district

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Forms

Forms relating to in rem jurisdiction, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

In a proceeding in rem, the particular federal district court has jurisdiction only if the res is within the territorial ambit of the court's jurisdiction at the time the libel is filed.¹

Observation:

In fact, the procedural rules applicable in admiralty actions expressly require, in an in rem action, a statement that the res, or property, is in the district.²

Generally, to complete the court's jurisdiction, the res must be seized and be under the control of the court.³The res remains in the court's custody during the proceeding and serves as both the respondent and the subject matter.⁴

Where a stipulation is filed and the res is released on this ground, the stipulation is, for jurisdictional purposes, a substitute for the res.⁵The same is true where money is placed with the court as a substitute for the res.⁶Similarly, where the property seized is sold under order of court, admiralty jurisdiction in rem continues against the proceeds as a substitute for the seized res.⁷

Where a vessel has been seized and has come under the jurisdiction of the court, jurisdiction is not lost by reason of its later accidental, fraudulent, or improper removal from the territorial ambit of the court's jurisdiction.⁸On the other hand, a voluntary abandonment and release of the res will destroy all rights acquired by the seizure.⁹The defect arising from the irregularity of the res being outside the court's district may be waived.¹⁰

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Footnotes

- ¹ The Lydia, 1 F.2d 18 (C.C.A. 2d Cir. 1924); The Rosemary, 26 F.2d 354 (C.C.A. 3d Cir. 1928); Carbon Black Export, Inc. v. The Monrosa, 254 F.2d 297 (5th Cir. 1958); Matheson v. City of Hoquiam, 170 Wash. App. 811, 287 P.3d 619 (Div. 2 2012), review denied, 176 Wash. 2d 1030, 299 P.3d 19 (2013).
- ² § 122.
- ³ Ex parte Republic of Peru, 318 U.S. 578, 63 S. Ct. 793, 87 L. Ed. 1014 (1943); The Resolute, 168 U.S. 437, 18 S. Ct. 112, 42 L. Ed. 533 (1897); Miller v. U.S., 78 U.S. 268, 20 L. Ed. 135, 1870 WL 12744 (1870); Gindele v. Corrigan, 129 Ill. 582, 22 N.E. 516 (1889).
As to the manner in which seizure must occur, see § 126.
- ⁴ Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F.3d 864 (11th Cir. 2010).
- ⁵ J.K. Welding Co. v. Gotham Marine Corporation, 47 F.2d 332 (S.D. N.Y. 1931); The Providence, 293 F. 595 (D.R.I. 1923).
As to a discussion of the procedural rules relating to obtaining release of the res, see §§ 155 to 166.
- ⁶ Republic of Turkey v. Zadeh, 112 F. Supp. 933 (S.D. N.Y. 1953).
- ⁷ Ex parte Prescott, 19 F. Cas. 1283, No. 11388 (C.C.D. N.H. 1814).
As to the procedural rules under which the res may be sold, see §§ 163, 165.
- ⁸ The Rio Grande, 90 U.S. 458, 23 L. Ed. 158, 1874 WL 17478 (1874).
- ⁹ The Rio Grande, 90 U.S. 458, 23 L. Ed. 158, 1874 WL 17478 (1874).
- ¹⁰ Republic of Turkey v. Zadeh, 112 F. Supp. 933 (S.D. N.Y. 1953).

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1. Types of Proceedings in Admiralty; in Personam and in Rem

§ 30. When proceeding in rem available—Requirement of maritime lien

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Forms

Forms relating to maritime liens, generally, see Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Ordinarily, the existence of a maritime lien is a requirement for a proceeding in rem in admiralty.¹ A maritime lien is a special property right in a ship given to a creditor by law as security for a debt or claim, and it attaches the moment the debt arises.² The mere fact that the contract sued on may be maritime in nature is not sufficient if no lien attaches.³ In the case of a maritime tort, a proceeding in rem may be instituted only if there is a lien against the res sued for the tort.⁴ It appears to be the law, however, that where the action is of a maritime nature and is for recovery of possession of a res, a proceeding in rem will lie regardless of the lack of a lien on the res.⁵

In order to maintain a libel in rem against a foreign vessel, it is not necessary that the foreign law recognize a lien in the situation from which the cause of action arises.⁶ Similarly, where the cause of action arises from an incident in the territorial waters of a foreign country, the fact that the law of that country does not provide for a lien in such a situation does not preclude a proceeding in rem in an American court.⁷

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Footnotes

- ¹ Supplemental Admiralty and Maritime Claims Rule C(1)(a).
- ² *Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864 (11th Cir. 2010).
- ³ *The Yankee Blade*, 28 F. Cas. 980, No. 16847 (C.C.S.D. Cal. 1855), *aff'd*, 60 U.S. 82, 19 How. 82, 15 L. Ed. 554, 1856 WL 8745 (1856).
- ⁴ *Gill v. U.S.*, 184 F.2d 49 (2d Cir. 1950); *The Kongsli*, 252 F. 267 (D. Me. 1918).
- ⁵ *The Losmar*, 20 F. Supp. 887 (D. Md. 1937); *The Oakmar*, 20 F. Supp. 650 (D. Md. 1937); *New England Trawler Equipment Co. v. One Model D. Trawler Winch and Appurtenances*, 5 F. Supp. 627 (D. Mass. 1933).
- ⁶ *The Oriskany*, 3 F. Supp. 805 (D. Md. 1933).
- ⁷ *The Kongsli*, 252 F. 267 (D. Me. 1918).

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II. Jurisdiction of Admiralty Courts

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2. Persons Subject to Jurisdiction; Extent of in Personam Jurisdiction

§ 31. Generally

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Treatises and Practice Aids

As to parties, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Forms

Forms relating to defendant not within district: see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

In an admiralty case, a federal district court may exercise personal jurisdiction over a nonresident defendant if: (1) the forum state's long-arm statute confers personal jurisdiction over that defendant, and (2) the exercise of personal jurisdiction comports with the Due Process Clause of the U.S. Constitution's Fourteenth Amendment.¹

Observation:

The rule establishing personal jurisdiction in any district court for cases arising under federal law where the defendant has

sufficient contacts with the United States as a whole but is not subject to jurisdiction in any particular state is applicable in admiralty actions.²

CUMULATIVE SUPPLEMENT

Cases:

Federal civil procedural rule sanctioning personal jurisdiction over nonresident based on nonresident's contacts with United States as a whole, rather than particular state, if certain conditions were met, applied in admiralty action, where nonresident defendant refused to identify another forum where jurisdiction would exist. [Fed.Rules Civ.Proc.Rule 4\(k\)\(2\)](#), 28 U.S.C.A. [Ogden v. GlobalSantaFe Offshore Services](#), 31 F. Supp. 3d 832, 89 Fed. R. Serv. 3d 405 (E.D. La. 2014).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Freudensprung v. Offshore Technical Services, Inc.](#), 379 F.3d 327 (5th Cir. 2004).
The District Court for the Southern District of Texas had specific personal jurisdiction over a nonresident vessel owner, in an action under admiralty law brought by a seaman, who sustained injuries while working aboard the owner's vessel, under the Due Process Clause, where the seaman was a Texas resident, hired by the vessel owner through the efforts of a Texas recruiting company, the seaman was treated in Texas, he had his paychecks sent to a Texas company for some period of his employment, the seaman received maintenance and cure payments in Texas, the vessel owner answered complaints in four other lawsuits in Texas, and Texas had a strong interest in protecting the health and safety of its residents. [Potts v. Cameron Offshore Boats, Inc.](#), 401 F. Supp. 2d 733 (S.D. Tex. 2005).
As to due-process limitations on service of process and limitations generally placed on federal court process, see [Am. Jur. 2d, Process §§ 269 to 277](#).
- ² [Adams v. Unione Mediterranea Di Sicurta](#), 364 F.3d 646 (5th Cir. 2004), referring to [Fed. R. Civ. P. 4\(k\)\(2\)](#), discussed at [Am. Jur. 2d, Process § 275](#).

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§ 32. Foreign nationals

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Forms

Forms relating to foreign law, vessels, states, and maritime law, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [[Westlaw® Search Query](#)]

In the absence of a statutory or treaty provision to the contrary, admiralty jurisdiction is not affected by the nationality of the parties¹ or of the res in a proceeding in rem.² Jurisdiction depends merely on whether the person or thing involved is within reach of the court's process.³

A treaty may alter the court's ability to exercise jurisdiction;⁴ thus, where a treaty provides the exclusive remedy for suit against a foreign national, an admiralty court is without power to exercise jurisdiction over a foreign national not otherwise amenable to suit under the treaty.⁵

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Footnotes

¹ [Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel](#), 640 F.2d 560 (5th Cir. 1981).

² [§ 34](#).

§ 32. Foreign nationals, 2 Am. Jur. 2d Admiralty § 32

³ Canada Malting Co. v. Patterson Steamships, 285 U.S. 413, 52 S. Ct. 413, 76 L. Ed. 837 (1932).

⁴ The Rindjani, 254 F. 913 (C.C.A. 9th Cir. 1919); The Cambitsis, 14 F.2d 236 (E.D. Pa. 1926).

⁵ Stanford v. Kuwait Airlines Corp., 705 F. Supp. 142 (S.D. N.Y. 1989).

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§ 33. Reciprocity

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An American admiralty court will not generally afford to citizens or subjects of a foreign country a remedy under American admiralty law if the courts of that country are not empowered to give the same remedy to citizens of the United States in similar controversies. Such lack of reciprocity, however, does not affect the jurisdiction of the American admiralty court, for it may extend to a citizen or subject of the foreign country any remedy that is available under American admiralty law if that course appears to be proper in the interests of justice.¹

The Public Vessels Act² provides that a national of a foreign country may not maintain a civil action under the Act unless it appears to the satisfaction of the court in which the action is brought that the government of that country, in similar circumstances, allows nationals of the United States to sue in its courts.³

It is not required, as a prerequisite to suit by a foreign national under the Suits in Admiralty Act, that it appear to the satisfaction of the court that the foreign government allows United States nationals to sue in its court.⁴

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¹ [The Maggie Hammond](#), 76 U.S. 435, 19 L. Ed. 772, 1869 WL 11555 (1869).

² [46 U.S.C.A. §§ 31101 to 31113](#), generally discussed in §§ [101](#) to [103](#).

³ [46 U.S.C.A. § 31111](#).

⁴ [Pascua v. Astrocielo Neptunea Armandora, S.A.](#), 614 F. Supp. 984 (S.D. Tex. 1985).

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II. Jurisdiction of Admiralty Courts

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§ 34. Generally; vessels

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Forms

Forms relating to vessel jurisdiction, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Subject to exemptions based on sovereignty,¹ admiralty has jurisdiction, within reach of its process, of all vessels or structures capable of navigating on water, actual navigability being the test.² However, a ship is not required be “in navigation” to be considered a “vessel” subject to maritime liens and the court’s admiralty jurisdiction.³ The focus is on the craft’s capability, not its present use or station, and the dispositive question is whether the watercraft’s use as a means of transportation on water is a practical possibility or merely a theoretical one.⁴

In the absence of a statutory or treaty provision to the contrary, admiralty jurisdiction is not affected by the nationality of the res in a proceeding in rem.⁵

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Footnotes

¹ §§ 40 to 44.

² *Fischer v. Carey*, 173 Cal. 185, 159 P. 577 (1916); *Reinhardt v. Newport Flying Service Corporation*, 232 N.Y. 115,

133 N.E. 371, 18 A.L.R. 1324 (1921).

As to claims arising while a vessel is located in navigable waters, see §§ 48, 49.

³ [Crimson Yachts v. Betty Lyn II Motor Yacht](#), 603 F.3d 864 (11th Cir. 2010).

⁴ [Crimson Yachts v. Betty Lyn II Motor Yacht](#), 603 F.3d 864 (11th Cir. 2010).

⁵ [Ex parte Kumezo Kawato](#), 317 U.S. 69, 63 S. Ct. 115, 87 L. Ed. 58 (1942); [Van Der Weyde v. Ocean Transport Co.](#), 297 U.S. 114, 56 S. Ct. 392, 80 L. Ed. 515 (1936).

As to proceedings in rem under admiralty, generally, see §§ 28 to 30.

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§ 35. Things recognized as vessels

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Law Reviews and Other Periodicals

Cardwell, [Beware! Defective Appurtenances: A Discussion of the "Substantial Relationship" Requirement for Invoking Admiralty Jurisdiction in the Products Liability Context](#), 36 Tul. Mar. L.J. 237 (Winter 2011)

The term "vessel" indicates any structure used, or capable of being used, for transportation on water¹and which is predominantly characterized by movement rather than fixity or permanence.²

Neither size, form, equipment, nor means of propulsion is a determinative factor on the question of whether a structure is a vessel under admiralty jurisdiction, which regards only the purpose for which it was constructed and the business in which it is engaged.³However, a vessel in the process of construction will become a vessel in terms of admiralty jurisdiction only after its launching.⁴If any considerable part of the hull and skeleton of an old vessel in its intact condition, without being broken up, is built upon, the law holds that in such a case, it is the old vessel rebuilt, subject to admiralty jurisdiction, and not a new vessel.⁵

Among the types of structures that have been recognized as vessels, in terms of admiralty jurisdiction, are wharf boats,⁶fishing boats,⁷derrick boats or barges,⁸canal boats drawn by animal power while in a canal and taken in tow by steamers for river trips,⁹canning barges,¹⁰houseboats,¹¹yachts,¹²floating bathhouses,¹³dredges that are not stationary,¹⁴barges¹⁵even though fastened to a river bottom and used as a work platform,¹⁶scows,¹⁷rafts,¹⁸lighters (including those designated as pontoons),¹⁹submarines,²⁰and car floats used as adjuncts to railroad transportation.²¹

The fact that a vessel is used for amusement or entertainment purposes does not deprive it of the character of a vessel for purposes of admiralty jurisdiction.²²

Maritime law ordinarily treats an appurtenance attached to a vessel in navigable waters as part of the vessel itself for purposes of determining the existence of federal admiralty jurisdiction.²³

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Footnotes

- ¹ [Cope v. Vallette Dry-Dock Co.](#), 119 U.S. 625, 7 S. Ct. 336, 30 L. Ed. 501 (1887).
- ² [Cope v. Vallette Dry-Dock Co.](#), 119 U.S. 625, 7 S. Ct. 336, 30 L. Ed. 501 (1887); [Reinhardt v. Newport Flying Service Corporation](#), 232 N.Y. 115, 133 N.E. 371, 18 A.L.R. 1324 (1921).
- ³ [Perry v. Haines](#), 191 U.S. 17, 24 S. Ct. 8, 48 L. Ed. 73 (1903).
- ⁴ [Tucker v. Alexandroff](#), 183 U.S. 424, 22 S. Ct. 195, 46 L. Ed. 264 (1902).
Even though a yacht's construction was not totally complete and was out of the water when the action was brought, the sailing of the yacht in navigable waters qualified it as a "vessel" for the purpose of determining admiralty and maritime jurisdiction. [Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht](#), Hull No. 01, 625 F.2d 44, 29 U.C.C. Rep. Serv. 1053 (5th Cir. 1980).
- ⁵ [Crimson Yachts v. Betty Lyn II Motor Yacht](#), 603 F.3d 864 (11th Cir. 2010) (despite a major overhaul performed by a shipyard, including, inter alia, the extension of its decks and replacement of its engines, generators, electronics, navigation equipment, plumbing, and wiring, a motor yacht retained a practical ability to engage in maritime transport and was, therefore, a "vessel" subject to maritime liens and the district court's admiralty jurisdiction).
- ⁶ [The Old Natchez](#), 9 F. 476 (S.D. Miss. 1881).
However, a wharf boat which served as an office, warehouse, and wharf but was not taken from place-to-place was not a vessel within admiralty jurisdiction. [Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.](#), 271 U.S. 19, 46 S. Ct. 379, 70 L. Ed. 805 (1926).
- ⁷ [Cline v. Price](#), 39 Wash. 2d 816, 239 P.2d 322 (1951).
- ⁸ [Patton-Tully Transp. Co. v. Turner](#), 269 F. 334 (C.C.A. 6th Cir. 1920); [Maloney v. State](#), 207 Misc. 894, 141 N.Y.S.2d 207 (Ct. Cl. 1955), judgment aff'd, 2 A.D.2d 195, 154 N.Y.S.2d 132 (4th Dep't 1956), reargument denied, leave to appeal granted, 2 A.D.2d 872, 157 N.Y.S.2d 924 (4th Dep't 1956) and judgment aff'd, 3 N.Y.2d 356, 165 N.Y.S.2d 465, 144 N.E.2d 364 (1957).
- ⁹ [The Quickstep](#), 76 U.S. 665, 19 L. Ed. 767, 1869 WL 11602 (1869).
- ¹⁰ [Christianson v. Western Pacific Packing Co.](#), 24 F. Supp. 437 (W.D. Wash. 1938).
- ¹¹ [Bubla v. Bradshaw](#), 795 F.2d 349 (4th Cir. 1986); [Rogers v. A Scow Without a Name](#), 80 F. 736 (E.D. N.Y. 1897).
A floating home that had no rudder or steering mechanism, that had an unraked hull, and that was incapable of self-propulsion, and whose rooms looked out upon the world, not through watertight portholes, but through French doors or ordinary windows, was not designed to any practical degree to transport persons or things over water, and thus did not qualify as a "vessel," and the district court could not exercise admiralty jurisdiction over an in rem action brought by the owner of the marina where the floating home was docked, seeking to obtain a maritime lien for dockage fees. [Lozman v. City of Riviera Beach, Fla.](#), 133 S. Ct. 735, 184 L. Ed. 2d 604 (2013).
- ¹² [Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht](#), Hull No. 01, 625 F.2d 44, 29 U.C.C. Rep. Serv. 1053 (5th Cir. 1980).
- ¹³ [Tebow v. City of New York](#), 61 F. 692 (S.D. N.Y. 1894).
- ¹⁴ [Warren & Arthur Smadbeck, Inc., v. Heling Contracting Corporation](#), 50 F.2d 99 (C.C.A. 2d Cir. 1931); [Kibadeaux v. Standard Dredging Co.](#), 81 F.2d 670 (C.C.A. 5th Cir. 1936).

The fact that as incidental to its dredging operation, for which a vessel was built and traditionally used, it assisted in furnishing material for building an airport runway does not by some judicial fiat transform the traditional function of a dredge and thus oust jurisdiction of the admiralty court. [Ramos v. Universal Dredging Corp.](#), 653 F.2d 1353 (9th Cir. 1981).

¹⁵ [The Northern Belle](#), 154 U.S. 571, 14 S. Ct. 1166, 19 L. Ed. 748 (1870); [Emmons v. Pacific Indem. Co.](#), 203 S.W.2d 342 (Tex. Civ. App. Beaumont 1947), judgment rev'd on other grounds, 146 Tex. 496, 208 S.W.2d 884 (1948); [Comar v. Department of Labor and Industries](#), 187 Wash. 99, 59 P.2d 1113 (1936).

¹⁶ [Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.](#), 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).

¹⁷ [Kenny v. City of New York](#), 108 F.2d 958 (C.C.A. 2d Cir. 1940); [In re Eastern Dredging Co.](#), 138 F. 942 (D. Mass. 1905).

¹⁸ [Seabrook v. Raft of Railroad Cross-Ties](#), 40 F. 596 (D.S.C. 1889).

¹⁹ [The Mackinaw](#), 165 F. 351 (D. Or. 1908).

²⁰ [U.S. v. Woodbury](#), 175 F.2d 854 (1st Cir. 1949).

²¹ [Nogueira v. New York, N.H. & H.R. Co.](#), 281 U.S. 128, 50 S. Ct. 303, 74 L. Ed. 754 (1930).

²² [The Jack-O-Lantern](#), 258 U.S. 96, 42 S. Ct. 243, 66 L. Ed. 482 (1922).
As to moored casinos, showboats, or museums constituting vessels, see § 39.

²³ [Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.](#), 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).

2 Am. Jur. 2d Admiralty § 36

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§ 36. Things recognized as vessels—Seaplanes; hydroplanes

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Treatises and Practice Aids

As to aviation and admiralty, generally, see Federal Procedure, L. Ed., Aviation and Space [\[Westlaw®: Search Query\]](#)

A means of transportation usable exclusively in the air is not a vessel in terms of admiralty law.¹ Nor is a seaplane a vessel, in terms of admiralty jurisdiction, while it is stored for repair in a hangar on dry land² although a seaplane when on the sea is a marine object subject to the maritime law of salvage.³ A seaplane crash can support an action in admiralty where the plane has not fully completed the takeoff phase of its flight and been brought under control as an airborne vehicle.⁴

A helicopter being used in place of a vessel to ferry personnel and supplies to and from an offshore drilling structure has been held to bear a significant relationship to traditional maritime activity so as to support admiralty jurisdiction.⁵

The special maritime and territorial jurisdiction of the United States, as used in U.S.C.A. Title 18 regarding crimes and criminal procedure, includes any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any state, territory, district, or possession thereof, while such aircraft is in flight over the high seas or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state,⁶ as well as certain space vehicles while in flight (which starts when the doors are closed following embarkation and ends when either the doors are opened on disembarkation on earth or proper authorities take responsibility after a forced landing).⁷

Footnotes

- ¹ [Hark v. Antilles Airboats, Inc.](#), 9 V.I. 393, 355 F. Supp. 683 (D.V.I. 1973); [The Crawford Bros. No. 2](#), 215 F. 269 (W.D. Wash. 1914) (a claim for the salvage of an airplane after it had fallen into navigable waters was not within admiralty jurisdiction).
As to admiralty jurisdiction over cases involving airline accidents, see [Am. Jur. 2d, Aviation § 190](#).
- ² [U.S. v. Northwest Air Service](#), 80 F.2d 804 (C.C.A. 9th Cir. 1935).
- ³ [Lambros Seaplane Base v. the Batory](#), 215 F.2d 228 (2d Cir. 1954).
- ⁴ [Hark v. Antilles Airboats, Inc.](#), 9 V.I. 393, 355 F. Supp. 683 (D.V.I. 1973).
- ⁵ [Ledoux v. Petroleum Helicopters, Inc.](#), 609 F.2d 824 (5th Cir. 1980).
- ⁶ 18 U.S.C.A. § 7(5).
- ⁷ 18 U.S.C.A. § 7(6).
As to a general discussion of the special maritime and territorial jurisdiction of the United States under this statute, see [Am. Jur. 2d, Criminal Law § 447](#).

2 Am. Jur. 2d Admiralty § 37

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§ 37. Things recognized as vessels—Structures attached to land; wharves, docks, piers, and bridges

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[Liability in admiralty for collision between vessel and drawbridge structure, 134 A.L.R. Fed. 537](#)

For purposes of admiralty jurisdiction, piers,¹ bridges,² wharves, docks,³ and marinas⁴ are not generally considered vessels or on navigable water but extensions of the land. Moreover, a floating dry dock is not a vessel, in terms of admiralty jurisdiction,⁵ nor is a floating dry dock that is moored and in use as a dry dock.⁶ However, some exceptions do exist.⁷

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Footnotes

¹ [Vega v. U.S.](#), 86 F. Supp. 293 (S.D. N.Y. 1949), decree aff'd by, 191 F.2d 921 (2d Cir. 1951). Plaintiffs' assertion against the New York State Thruway Authority that the force of a discharge onto the plaintiffs' property from a drain constructed by the defendant on adjacent lands was eroding soil around a bulkhead and causing it to collapse raised no federal claim, for admiralty jurisdiction did not reach injuries to a structure attached to land. [Kohlasch v. New York State Thruway Authority](#), 460 F. Supp. 956 (S.D. N.Y. 1978).

² [State of Maine v. U.S.](#), 134 F.2d 574 (C.C.A. 1st Cir. 1943); [The Curtis](#), 37 F. 705 (E.D. Wis. 1889).

- ³ London Guarantee & Accident Co. v. Industrial Accident Commission of California, 279 U.S. 109, 49 S. Ct. 296, 73 L. Ed. 632 (1929); State Industrial Com'n of State of New York v. Nordenholt Corp., 259 U.S. 263, 42 S. Ct. 473, 66 L. Ed. 933, 25 A.L.R. 1013 (1922); Wiper v. Great Lakes Engineering Works, 340 F.2d 727 (6th Cir. 1965) (dock part of land); Rudo v. A.H. Bull S.S. Co., 168 Md. 281, 177 A. 538 (1935).
- ⁴ Lewis Charters, Inc. v. Huckins Yacht Corp., 871 F.2d 1046, 13 Fed. R. Serv. 3d 1374 (11th Cir. 1989).
- ⁵ Netherlands American Steam Nav. Co. v. Gallagher, 282 F. 171 (C.C.A. 2d Cir. 1922); Richendollar v. Diamond M Drilling Co., Inc., 819 F.2d 124 (5th Cir. 1987); Dobrovich v. Hotchkiss, 14 F. Supp. 2d 232 (D. Conn. 1998); Todd Shipyards Corp. v. U.S., 9 Ct. Int'l Trade 464, 624 F. Supp. 1553 (1985), judgment aff'd, 4 Fed. Cir. (T) 85, 791 F.2d 164 (1986).
- ⁶ Dobrovich v. Hotchkiss, 14 F. Supp. 2d 232 (D. Conn. 1998); Commercial Union Ins. Co. v. Detyens Shipyard, Inc., 147 F. Supp. 2d 413 (D.S.C. 2001).
- ⁷ Taylor v. Baltimore & O. R. Co., 344 F.2d 281 (2d Cir. 1965) (a gangplank, not attached to a ship or dock permanently, was within admiralty jurisdiction); O'Keeffe v. Atlantic Stevedoring Co., 354 F.2d 48 (5th Cir. 1965) (admiralty jurisdiction existed where a worker suspended from a boom attached to a ship, hanging over a land-based dock, was injured when struck by the dock); Interlake S. S. Co. v. Nielsen, 338 F.2d 879 (6th Cir. 1964) (the custodian of a docked vessel who drove a car off the dock was within maritime jurisdiction).

2 Am. Jur. 2d Admiralty § 38

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D. Jurisdiction over the Parties or Res Involved

3. Property Subject to Jurisdiction; Extent of in Rem Jurisdiction

§ 38. “Dead vessel” doctrine

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Admiralty](#)  6

Under the “dead vessel doctrine,” a ship loses its status as a vessel subject to admiralty jurisdiction when its function is so changed that it has no further navigation function.¹ However, the mere fact that a vessel is temporarily out of service does not render it a “dead vessel.”² A vessel is not a “dead vessel” merely because it is not actively engaged in trade or commerce where it is in dry dock,³ or arrangements have been made to alter it to fit it for an intended maritime service.⁴

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Footnotes

¹ [Puerto Rico Ports Authority v. Umpierre-Solares](#), 456 F.3d 220 (1st Cir. 2006); [Marina Entertainment Complex, Inc. v. Hammond Port Authority](#), 842 F. Supp. 367 (N.D. Ind. 1994).

² [Mullane v. Chambers](#), 333 F.3d 322, 56 Fed. R. Serv. 3d 846 (1st Cir. 2003).

³ [American Eastern Development Corp. v. Everglades Marina, Inc.](#), 608 F.2d 123 (5th Cir. 1979); [Meyers v. Pittsburgh S. S. Co.](#), 165 F.2d 642, 38 Ohio Op. 100 (C.C.A. 6th Cir. 1948).

⁴ [Kilb v. Menke](#), 121 F.2d 1013 (C.C.A. 5th Cir. 1941).

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3. Property Subject to Jurisdiction; Extent of in Rem Jurisdiction

§ 39. Effect of mooring or docking

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  6

For the purpose of federal admiralty jurisdiction, a watercraft is not capable of being used in any meaningful sense, and thus does not qualify as a “vessel,” if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.¹ Thus, a floating casino does not qualify as a “vessel” for federal admiralty jurisdiction where the casino is indefinitely moored to land by lines tied to steel pilings; it receives water, telephone, sewer, and cable television services from land-based sources; and it has not been used as a seagoing vessel for several years.²

A ship does not cease to be a vessel for purposes of admiralty jurisdiction while it is engaged in unloading or is waiting to unload.³ Thus, the fact that a vessel is temporarily moored or docked and securely fastened with a gangplank or by other means, or in dry dock, does not necessarily make it part of the land and thus take it out of admiralty jurisdiction.⁴

It has also been observed that a maritime activity, such as repair of a ship in dry dock, does not lose its distinctive quality and become an activity on land when the water is pumped out of the dock so that the work may be done.⁵ Also, a vessel floated into a so-called “graven dock,” distinguished from a “floating dock” because it is permanently attached to the land, is, for the purposes of admiralty jurisdiction, still in navigable waters though the water may be temporarily withdrawn.⁶

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Footnotes

¹ De La Rosa v. St. Charles Gaming Co., 474 F.3d 185 (5th Cir. 2006).

² De La Rosa v. St. Charles Gaming Co., 474 F.3d 185 (5th Cir. 2006).

³ McMorran v. The Millinokett, 191 Mich. 151, 157 N.W. 421 (1916).

§ 39. Effect of mooring or docking, 2 Am. Jur. 2d Admiralty § 39

- ⁴ The Jefferson, 215 U.S. 130, 30 S. Ct. 54, 54 L. Ed. 125 (1909); Perry v. Haines, 191 U.S. 17, 24 S. Ct. 8, 48 L. Ed. 73 (1903); Cabasug v. Crane Co., 956 F. Supp. 2d 1178 (D. Haw. 2013).
- ⁵ Perry v. Haines, 191 U.S. 17, 24 S. Ct. 8, 48 L. Ed. 73 (1903); The Benefactor, 103 U.S. 239, 26 L. Ed. 351, 1880 WL 18746 (1880).
- ⁶ Vasquez v. GMD Shipyard Corp., 582 F.3d 293 (2d Cir. 2009); Butler v. Robins Dry Dock & Repair Co., 240 N.Y. 23, 147 N.E. 235 (1925).

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2 Am. Jur. 2d Admiralty § 40

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4. Effect of Sovereignty

§ 40. United States

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  125(10.1) to 125(14)

The United States is not subject to admiralty jurisdiction in the absence of the consent of Congress.¹ Since the exemption of a public vessel of the United States from admiralty jurisdiction, and thus from seizure under admiralty process, is absolute, in the absence of congressional consent, until such consent is given, a court has no jurisdiction to try an issue as to whether the government is the rightful owner of a public vessel claimed as its own.² Moreover, vessels owned and operated by the United States in public service in wartime, even after their release from public service, are not subject to admiralty proceedings in rem for damage caused by collisions that occurred while the vessels were under government operation.³

Congress has consented to admiralty jurisdiction over suits involving the United States where those suits fall within the Suits in Admiralty Act⁴ or the Public Vessels Act.⁵

Although the Admiralty Jurisdiction Extension Act⁶ recognizes limited waivers of the federal government's sovereign immunity, immunity is not waived for tort claims based on the discretionary functions of government.⁷

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Footnotes

¹ The *Western Maid*, 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 (1922); *Schillinger v. U.S.*, 30 Ct. Cl. 480, 155 U.S. 163, 15 S. Ct. 85, 39 L. Ed. 108 (1894).

² *U.S. v. Jardine*, 81 F.2d 745 (C.C.A. 5th Cir. 1935).

³ The *Western Maid*, 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 (1922).

⁴ §§ 96 to 99.

⁵ §§ 101 to 103.

⁶ As to the effect of the Act on a court's jurisdiction, see § 50.

⁷ *Arkansas River Co. v. U.S.*, 840 F. Supp. 1103 (N.D. Miss. 1993).

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2 Am. Jur. 2d Admiralty § 41

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4. Effect of Sovereignty


§ 41. States; local governments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Federal Courts](#)  2375(1), 2376, 2380, 2381, 2383(1) to 2384

West's Key Number Digest, [Municipal Corporations](#)  853

West's Key Number Digest, [States](#)  191.1, 191.9(1)

The rule that a state may not be sued without its consent applies to an admiralty suit in personam,¹ as well as an in rem admiralty action.² Thus, absent waiver, the doctrine of sovereign immunity embodied in the U.S. Constitution's Eleventh Amendment bars an admiralty claim against the state.³ However, to be exempt from the admiralty process, a vessel must be engaged in a governmental function in addition to being owned solely by the state or its agency.⁴

Three considerations must be present before a state may avail itself of Eleventh Amendment immunity in an in rem admiralty cases: (1) the State must not have consented to the court's jurisdiction, (2) the State must assert a colorable claim to, and (3) have actual possession of, the res.⁵ Thus, when a state does not have actual possession over a sunken vessel, the Eleventh Amendment does not bar a federal court from determining the claims to the vessel under maritime law.⁶

The exemption of American states applies to such subdivisions as counties⁷ but does not generally apply to cities.⁸ Furthermore, an agency's status as a "public entity" within the meaning of a state statute limiting the liability of public entities for "policymaking or discretionary acts" does not, by itself, confer immunity against a claim under general maritime law because Eleventh Amendment sovereign immunity does not apply unless the agency is acting as an arm of the state, and a state statute does not displace admiralty law.⁹

A district court in an admiralty in rem action may arrest property held by state officials and bring the property within the jurisdiction of the court, as the Eleventh Amendment does not immunize the property from the federal court's process, on the basis that the Eleventh Amendment is not applicable where the process is directed at state officials rather than the State or a state agency and where the officials do not have a colorable right to withhold possession of the property.¹⁰

Footnotes

- ¹ In re State of New York, 256 U.S. 490, 41 S. Ct. 588, 65 L. Ed. 1057 (1921).
- ² California v. Deep Sea Research, Inc., 523 U.S. 491, 118 S. Ct. 1464, 140 L. Ed. 2d 626 (1998).
- ³ Williamson Towing Co., Inc. v. State of Ill., 534 F.2d 758 (7th Cir. 1976).
- ⁴ The West Point, 71 F. Supp. 206 (E.D. Va. 1947).
- ⁵ Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, 584 F. Supp. 2d 1367 (S.D. Ga. 2008), order aff'd, 594 F.3d 1330 (11th Cir. 2010).
- ⁶ Great Lakes Exploration Group, LLC v. Unidentified Wrecked and (For Salvage-Right Purposes), Abandoned Sailing Vessel, 522 F.3d 682 (6th Cir. 2008).
- ⁷ Broward County, Fla. v. Wickman, 195 F.2d 614 (5th Cir. 1952).
- ⁸ Broward County, Fla. v. Wickman, 195 F.2d 614 (5th Cir. 1952); U.S. v. Port of Portland, 300 F. 724 (C.C.A. 9th Cir. 1924); The F.C. Latrobe, 28 F. 377 (D. Md. 1886).
- ⁹ Fuesting v. Lafayette Parish Bayou Vermilion Dist., 470 F.3d 576 (5th Cir. 2006).
- ¹⁰ Florida Dept. of State v. Treasure Salvors, Inc., 458 U.S. 670, 102 S. Ct. 3304, 73 L. Ed. 2d 1057 (1982).

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D. Jurisdiction over the Parties or Res Involved

4. Effect of Sovereignty

§ 42. Foreign sovereign

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [International Law](#)  10.31, 10.33, 10.36, 10.41

It has been a consistently recognized policy, often certified by the Department of State, and for that reason acted on by the courts even when not so certified, that a vessel in the possession and service of a friendly foreign government is exempted from American admiralty jurisdiction.¹ This policy was first applied to warships of friendly foreign powers² but has been extended to ships acquired, manned, and operated by friendly foreign governments for purposes of advancing the trade of their people or providing revenue for their government³ and to vessels operated by friendly foreign governments for commercial purposes.⁴ However, the immunity does not extend to a merchant vessel owned by a foreign government but in private possession.⁵

Practice Tip:

The court may properly accept an executive suggestion of immunity without conducting an independent judicial inquiry into whether the defendant vessel was in fact owned or controlled by a foreign nation.⁶

Where attachment is sought to obtain jurisdiction rather than secure satisfaction of the judgment, attachment is not available against the defendant foreign state and vessel owner.⁷

Actual possession by the foreign government is required to exempt a vessel from admiralty jurisdiction, mere constructive possession being insufficient.⁸

Caution:

Jurisdiction over a foreign sovereign is also affected by the Foreign Sovereign Immunities Act; thus, an admiralty court may have to consider not only the factors which would give it jurisdiction over the action because of its maritime aspects but also whether the Act would permit it to extend authority over the foreign nation.⁹

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Footnotes

- ¹ Republic of Mexico v. Hoffman, 324 U.S. 30, 65 S. Ct. 530, 89 L. Ed. 729 (1945); Ex parte Republic of Peru, 318 U.S. 578, 63 S. Ct. 793, 87 L. Ed. 1014 (1943).
- ² In re State of New York, 256 U.S. 503, 41 S. Ct. 592, 65 L. Ed. 1063 (1921).
- ³ Berizzi Bros. Co. v. The Pesaro, 271 U.S. 562, 46 S. Ct. 611, 70 L. Ed. 1088 (1926); In re State of New York, 256 U.S. 503, 41 S. Ct. 592, 65 L. Ed. 1063 (1921) (vessel used for towing of dredges, etc.).
- ⁴ The Navemar, 303 U.S. 68, 58 S. Ct. 432, 82 L. Ed. 667 (1938).
- ⁵ Republic of Mexico v. Hoffman, 324 U.S. 30, 65 S. Ct. 530, 89 L. Ed. 729 (1945).
- ⁶ Southeastern Leasing Corp. v. Stern Dragger Belogorsk, 493 F.2d 1223 (1st Cir. 1974).
- ⁷ Mangattu v. M/V Ibn Hayyan, 35 F.3d 205 (5th Cir. 1994).
- ⁸ Republic of Mexico v. Hoffman, 143 F.2d 854 (C.C.A. 9th Cir. 1944), judgment aff'd, 324 U.S. 30, 65 S. Ct. 530, 89 L. Ed. 729 (1945).
- ⁹ As to a discussion of the Foreign Sovereign Immunities Act, 28 U.S.C.A. § 1330, 28 U.S.C.A. §§ 1602 to 1611, see Am. Jur. 2d, International Law §§ 93 to 174.

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4. Effect of Sovereignty

§ 43. Waiver of exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [International Law](#) 10.32

West's Key Number Digest, [States](#) 112.2(1), 184.2(1), 184.2(2)

Exemption from admiralty jurisdiction on the ground of sovereignty may be waived by the United States Congress,¹ by foreign sovereigns,² and by American states.³ Indeed, a state or commonwealth may waive its immunity to admiralty claims under its tort claims act.⁴

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¹ § 44.

² *Ex parte Republic of Peru*, 318 U.S. 578, 63 S. Ct. 793, 87 L. Ed. 1014 (1943); *In re Muir*, 254 U.S. 522, 41 S. Ct. 185, 65 L. Ed. 383 (1921).
Sovereign immunity granted to the Bahamas under the Foreign Sovereign Immunities Act was not waived in a tort suit arising from an incident in which the plaintiff's minor son was injured by a gunshot when governmental boats fired on the plaintiff's fishing vessel where FSIA extended maritime and territorial jurisdiction only to the "high seas" and Bahamian territorial waters were not "high seas." *Perez v. Bahamas*, 652 F.2d 186 (D.C. Cir. 1981).

³ *The Lisbon*, 3 F.2d 408 (C.C.A. 9th Cir. 1925).

⁴ *Morris v. Massachusetts Maritime Academy*, 409 Mass. 179, 565 N.E.2d 422, 65 Ed. Law Rep. 147 (1991).

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4. Effect of Sovereignty

§ 44. Waiver of exemption—By United States

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  125(10.1) to 125(14)

Congress may waive exemption and may consent to admiralty suits against the United States either in personam or in rem.¹Such a waiver may be declared for a particular case, or generally, or for certain types of suits.²The principal statutes waiving the United States' exemption in admiralty matters are the Suits in Admiralty Act³and the Public Vessels Act.⁴Additionally, Congress has waived United States' sovereign immunity from suits based on maritime government contracts but only according to the terms of the Contract Disputes Act.⁵

Whenever the United States sues for damage inflicted on its vessel or cargo, it impliedly waives its exemption from admiralty jurisdiction as to cross libels or counterclaims arising from the same transaction.⁶

A waiver is usually construed strictly in favor of the interests of the United States⁷although the overriding consideration is that the intent of Congress must be given effect insofar as it can be ascertained.⁸

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Footnotes

¹ [The Western Maid](#), 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 (1922).

² [The Lake Monroe](#), 250 U.S. 246, 39 S. Ct. 460, 63 L. Ed. 962 (1919).

³ §§ [96](#) to [100](#).

⁴ §§ [101](#) to [103](#).

⁵ [Hodgdon v. U.S.](#), 919 F. Supp. 37 (D. Me. 1996).
As to the Contract Disputes Act, see [41 U.S.C.A. §§ 7101](#) to [7109](#).

- ⁶ U.S. v. The Thekla, 266 U.S. 328, 45 S. Ct. 112, 69 L. Ed. 313 (1924); The Western Maid, 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 (1922).
- ⁷ U.S. v. Clyde-Mallory Lines, 127 F.2d 569 (C.C.A. 5th Cir. 1942), judgment aff'd, 317 U.S. 395, 63 S. Ct. 294, 87 L. Ed. 355 (1943); Puget Sound Stevedoring Co. v. U.S., 287 F. 751 (W.D. Wash. 1923).
- ⁸ Cohen v. U.S., 195 F.2d 1019 (2d Cir. 1952).

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West's A.L.R. Digest, [Admiralty](#) 🔑 1(1), 1.20(2), 1.20(5), 4, 6 to 11, 13, 14, 17.1 to 23

West's A.L.R. Digest, [Criminal Law](#) 🔑 97(3)

West's A.L.R. Digest, [Salvage](#) 🔑 45

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1. In General

§ 45. Principal subjects; maritime nature of subject

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1(1)

In determining the boundaries of admiralty jurisdiction, the U.S. Supreme Court looks to the purpose of the grant,¹ and focusing on the status of the claimant to determine whether admiralty jurisdiction exists is inappropriate.²

The principal subjects of admiralty jurisdiction are maritime contracts and maritime torts.³ Admiralty jurisdiction embraces petitory as well as possessory suits.⁴ It extends to maritime liens,⁵ various maritime service claims,⁶ crimes on vessels and navigable waters,⁷ and sundry other matters. The jurisdiction of admiralty has been extended to wrongful death actions⁸ and injuries occurring in maritime employment.⁹

What subjects are maritime in nature is not easily defined.¹⁰ In determining the existence of admiralty jurisdiction, the inquiry does not turn on the actual effects on maritime commerce of an incident giving rise to a suit but rather on the general character of the incident involved; thus, the court must assess the general features and type of incident involved to determine whether such an incident is likely to disrupt commercial activity and whether it is substantially related to traditional maritime activity.¹¹

Admiralty jurisdiction is not dependent on whether or not the subject matter involves interstate or international commerce.¹²

CUMULATIVE SUPPLEMENT

Cases:

For purposes of determining a court's admiralty jurisdiction, the relevant activity is defined by the general type of conduct from which the incident arose, not by the specific facts of the case. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#); [28 U.S.C.A. § 1333\(1\)](#).

[Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 94 F. Supp. 3d 1345 (M.D. Ga. 2015).

The connection with maritime activity test for admiralty jurisdiction over a civil case considers not whether commercial disruption did or did not occur; rather, the test focuses on the potential for disruption based on the general character of the incident. [28 U.S.C.A. § 1333\(1\)](#). [Ortega Garcia v. United States](#), 427 F. Supp. 3d 882 (S.D. Tex. 2019).

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- ¹ [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
- ² [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
As to jurisdiction over the parties to an action, see §§ [27](#), [31](#) to [33](#).
- ³ [The Belfast](#), 74 U.S. 624, 19 L. Ed. 266, 1868 WL 11126 (1868).
As to jurisdiction over maritime contracts, see §§ [53](#) to [61](#).
As to jurisdiction over maritime torts, see §§ [65](#) to [72](#).
- ⁴ [§ 73](#).
- ⁵ [§ 105](#).
- ⁶ §§ [83](#), [64](#).
- ⁷ [§ 76](#).
- ⁸ §§ [106](#) to [114](#).
- ⁹ [Am. Jur. 2d, Workers' Compensation § 40](#).
- ¹⁰ [U.S. v. Matson Nav. Co.](#), 201 F.2d 610 (9th Cir. 1953).
- ¹¹ [Sisson v. Ruby](#), 497 U.S. 358, 110 S. Ct. 2892, 111 L. Ed. 2d 292 (1990).
- ¹² [London Guarantee & Accident Co. v. Industrial Accident Commission of California](#), 279 U.S. 109, 49 S. Ct. 296, 73 L. Ed. 632 (1929); [Cowden v. Pacific Coast S.S. Co.](#), 94 Cal. 470, 29 P. 873 (1892); [In re Wolf's Case](#), 285 Mass. 181, 189 N.E. 85 (1934).
The admiralty jurisdiction of the federal courts is not limited by the Commerce Clause of the U.S. Constitution, and attaches to marine contracts and torts in strictly internal state commerce, where the navigation is on the waters of the United States. [The Lottawanna](#), 88 U.S. 558, 22 L. Ed. 654, 1874 WL 17373 (1874).

2 Am. Jur. 2d Admiralty § 46

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1. In General

§ 46. Accounting matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  7, 10(2)

Admiralty has no jurisdiction over a cause of action that is primarily one for an accounting.¹ Thus, although a contract for the repair of a vessel is a maritime contract, a district court will not exercise admiralty jurisdiction where the remedy sought is an accounting between joint venturers.² However, where admiralty acquires jurisdiction on a valid ground, it may incidentally decree an accounting between the parties.³

A court of admiralty, though it may make computations, and though its jurisdiction is not limited to claims that have been liquidated or agreed on,⁴ may decline to assume jurisdiction of an account incidentally involved if it is of a complicated nature.⁵ However, it will be inclined to assume jurisdiction if the account incidentally involved is simple in nature.⁶

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Footnotes

¹ The Eclipse, 135 U.S. 599, 10 S. Ct. 873, 34 L. Ed. 269 (1890); The Detroit, 63 U.S. 330, 22 How. 330, 16 L. Ed. 249, 1859 WL 10597 (1859).

² Vera, Inc. v. Tug Dakota, 769 F. Supp. 451 (E.D. N.Y. 1991).

³ Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950).

⁴ The I.S.E. 2, 15 F.2d 749 (C.C.A. 9th Cir. 1926).

⁵ The Constellation, 61 U.S. 162, 20 How. 162, 15 L. Ed. 871, 1857 WL 8549 (1857).

⁶ [The I.S.E. 2, 15 F.2d 749 \(C.C.A. 9th Cir. 1926\).](#)

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2 Am. Jur. 2d Admiralty § 47

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 47. Generally

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#) 4

Location has a strong bearing on whether the subject involved is a maritime matter within the scope of admiralty jurisdiction.¹ Admiralty jurisdiction depends on the occurrence of an event on navigable waters although not on its occurrence on a ship.²

A court of admiralty is not deprived of jurisdiction merely because the transaction in controversy occurred within the body of a county.³ Also, the proposition in the English cases, that where a thing is done partly on land and partly on the high seas the jurisdiction of admiralty is excluded, has not been adopted by the American courts.⁴

CUMULATIVE SUPPLEMENT

Cases:

Incident in which offshore drilling platform worker was injured during personnel basket transfer between platform and living quarters vessel did not pose more than a fanciful risk to commercial shipping, and thus, worker's tort claims against platform owner and employer were not maritime in nature, and adjacent state law, rather than federal admiralty law, governed them; fixed drilling platform did not exist for any purpose related to traditional maritime navigation or commerce, but rather, it existed solely to obtain minerals from the outer continental shelf (OCS), exploration and development of the OCS were not themselves maritime commerce, and there was nothing inherently maritime about the tasks performed by offshore platform workers, and moreover, to extent that maritime activities may have surrounded personnel basket transfers to and from offshore platforms, any connection to maritime law was eclipsed by their connection to development of the OCS. 28 U.S.C.A. § 1333(1). [Hicks v. BP Exploration & Production, Inc.](#), 308 F. Supp. 3d 878 (E.D. La. 2018).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Latta & Terry Const Co v. British Steamship “Raithmoor,”](#) 241 U.S. 166, 36 S. Ct. 514, 60 L. Ed. 937 (1916); [Ex parte Gordon](#), 104 U.S. 515, 26 L. Ed. 814, 1881 WL 19889 (1881).
As to the locality test of a tort to determine jurisdiction, see § 69.
- ² [The Plymouth](#), 70 U.S. 20, 18 L. Ed. 125, 1865 WL 10715 (1865).
As to what constitutes “navigable waters” within admiralty jurisdiction, see §§ 48, 49.
As to admiralty jurisdiction over cases involving airline accidents, see [Am. Jur. 2d, Aviation § 190](#).
- ³ [Atlantic Transport Co. of W.Va. v. Imbrovek](#), 234 U.S. 52, 34 S. Ct. 733, 58 L. Ed. 1208 (1914); [The Commerce](#), 66 U.S. 574, 17 L. Ed. 107, 1861 WL 7660 (1861).
- ⁴ [Interlake S. S. Co. v. Nielsen](#), 338 F.2d 879 (6th Cir. 1964).
As to admiralty jurisdiction where a tort occurred or precipitated onto land, see § 69.

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2 Am. Jur. 2d Admiralty § 48

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 48. Navigable waters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  4

A.L.R. Library

[Portage Necessity as Affecting Navigability of Waterway Under Nonenvironmental Federal Law, 3 A.L.R. Fed. 2d 375](#)

Forms

Forms relating to navigable waters, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [[Westlaw® Search Query](#)]

Law Reviews and Other Periodicals

Kitz, [Salvaging Federal Admiralty Jurisdiction: The Eleventh Circuit Advances a Modern Test for Waterway Navigability in Aqua Log, Inc. v. Lost & Abandoned Pre-Cut Logs & Rafts of Logs](#), 38 Tul. Mar. L.J. 301 (Winter 2013)

The admiralty and maritime jurisdiction of the United States includes all navigable waters within the country¹ and extends to water routes made navigable even if not formerly so.² A waterway at a particular situs is “navigable” for purposes of admiralty jurisdiction if it is presently used, or is presently capable of being used, as an interstate highway for commercial trade³ or travel in the customary modes of travel on water.⁴ Admiralty jurisdiction will not extend to a body of water which is landlocked and located entirely within one state⁵ and where it is additionally impossible to travel by any type of watercraft from the body of water to any other state, to the open ocean, or to any foreign country.⁶ Admiralty jurisdiction may extend to navigable waters irrespective of whether they are domestic, foreign, or parts of the high seas that belong to no nation.⁷

Waters within the ebb and flow of the tide are considered navigable waterways for the purpose of admiralty jurisdiction.⁸ The fact that a river may be sometimes unnavigable does not impair admiralty jurisdiction over it.⁹ However, an otherwise unnavigable river may not be rendered navigable, for purposes of admiralty jurisdiction, simply because, in extraordinary conditions, its waters rise high enough to support forms of transportation normally impossible.¹⁰ Moreover, the fact that a lake was previously navigable is not enough to confer admiralty jurisdiction on a federal court.¹¹

An international treaty may also govern when admiralty jurisdiction applies to a waterway that is otherwise clearly “navigable.”¹² Moreover, although admiralty courts may adjudicate matters arising on navigable waters anywhere in the world, that recognition of subject matter jurisdiction does not imply that American courts in admiralty have the power to command that any person or any ship appear before a United States court sitting in admiralty; the United States has not attempted to extend its sovereignty over persons or things beyond the territorial limits of the United States.¹³

CUMULATIVE SUPPLEMENT

Cases:

For purposes of determining a court’s admiralty jurisdiction, traditional maritime activity includes navigation and commerce on navigable waters. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#); [28 U.S.C.A. § 1333\(1\)](#). [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 101 F. Supp. 3d 1345 (M.D. Ga. 2015).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Southern S.S. Co. v. N.L.R.B.](#), 316 U.S. 31, 62 S. Ct. 886, 86 L. Ed. 1246 (1942).
- ² [PPL Montana, LLC v. Montana](#), 132 S. Ct. 1215, 182 L. Ed. 2d 77 (2012).
As to navigable waters, generally, see [Am. Jur. 2d, Waters §§ 135 to 150](#).
- ³ [Cunningham v. Director, Office Of Workers’ Compensation Programs](#), 377 F.3d 98 (1st Cir. 2004); [LeBlanc v. Cleveland](#), 198 F.3d 353 (2d Cir. 1999); [Price v. Price](#), 929 F.2d 131 (4th Cir. 1991); [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 709 F.3d 1055 (11th Cir. 2013) (waterways where logs were found were capable of supporting commercial activity and therefore were “navigable waters”).
- ⁴ [Cunningham v. Director, Office Of Workers’ Compensation Programs](#), 377 F.3d 98 (1st Cir. 2004) (contemporary navigability in fact); [LeBlanc v. Cleveland](#), 198 F.3d 353 (2d Cir. 1999); [Price v. Price](#), 929 F.2d 131 (4th Cir. 1991).
- ⁵ [Reynolds v. Bradley](#), 644 F. Supp. 42 (N.D. N.Y. 1986); [Casciani v. Pruett](#), 109 F. Supp. 2d 894 (M.D. Tenn. 2000).
- ⁶ [In re Bernstein](#), 81 F. Supp. 2d 176 (D. Mass. 1999).
- ⁷ [Panama R. Co. v. Napier Shipping Co.](#), 166 U.S. 280, 17 S. Ct. 572, 41 L. Ed. 1004 (1897); [The Belgenland](#), 114 U.S.

355, 5 S. Ct. 860, 29 L. Ed. 152 (1885).

⁸ [Otto v. Alper](#), 489 F. Supp. 953, 6 Fed. R. Evid. Serv. 511 (D. Del. 1980).

A designated personal watercraft area in a bay was “navigable,” for purposes of federal admiralty jurisdiction, even though it was one to two miles from the ocean, past two bridges, cordoned off by a row of buoys, and limited to personal watercraft where the bay was open to the ocean and subject to the ebb and flow of tides. [In re Mission Bay Jet Sports, LLC](#), 570 F.3d 1124 (9th Cir. 2009).

⁹ [Nelson v. Leland](#), 63 U.S. 48, 22 How. 48, 16 L. Ed. 269, 1859 WL 10632 (1859).

¹⁰ [LeBlanc v. Cleveland](#), 198 F.3d 353 (2d Cir. 1999).

¹¹ [Historic Aircraft Recovery Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft](#), 294 F. Supp. 2d 132 (D. Me. 2003).

¹² [Perez v. The Bahamas](#), 482 F. Supp. 1208 (D.D.C. 1980), judgment aff’d, 652 F.2d 186 (D.C. Cir. 1981).

¹³ [R.M.S. Titanic, Inc. v. Haver](#), 171 F.3d 943 (4th Cir. 1999).

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2 Am. Jur. 2d Admiralty § 49

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E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 49. Navigable waters—Flooded lands; man-made waterways or constructs

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Admiralty jurisdiction over navigable waters extends to the ordinary high watermark but is not extended beyond that limit by the fact that floods make navigation over the flooded land possible at times.¹

An artificial water body, such as a man-made reservoir, is navigable in fact for purposes of conferring admiralty jurisdiction if it is used or capable or susceptible of being used as an interstate highway for commerce over which trade or travel is or may be conducted in customary modes of travel on water.²

Accidents on petroleum platforms,³ piers, or other structures⁴ are not under maritime jurisdiction.

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Footnotes

¹ [The Arkansas](#), 17 F. 383 (S.D. Iowa 1883).

² [Finneseth v. Carter](#), 712 F.2d 1041 (6th Cir. 1983).

³ [Terry v. Raymond Intern., Inc.](#), 658 F.2d 398 (5th Cir. 1981) (overruled on other grounds by, [Point Landing, Inc. v. Omni Capital Intern., Ltd.](#), 795 F.2d 415 (5th Cir. 1986)) (interpreting the Death on the High Seas Act).

⁴ [Rohde v. Southeastern Drilling Co., Inc.](#), 667 F.2d 1215 (5th Cir. 1982).

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E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 50. Effect of Admiralty Jurisdiction Extension Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  4, 22

A.L.R. Library

[Liability in admiralty for collision between vessel and drawbridge structure](#), 134 A.L.R. Fed. 537

[Validity, construction, and application of Admiralty Jurisdiction Extension Act \(46 U.S.C.A. sec. 740\)](#), 14 A.L.R. Fed. 664

Forms

Forms relating to the Admiralty Jurisdiction Extension Act, generally, see Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

The scope of admiralty jurisdiction over a particular subject matter is significantly affected by the Admiralty Jurisdiction Extension Act,¹ which provides that the admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters even though the injury or damage is done or consummated on land.² The purpose of the Act was to end concern over the sometimes confusing line between land and water, by investing admiralty with jurisdiction over all cases where an injury was caused by a ship or other vessel on navigable water, even if such injury occurred on land.³ The Act thus makes available a concurrent remedy in admiralty for an

already existing common-law action and makes admiralty principles and rules of practice applicable in actions brought under the Act.⁴

The Act creates no new cause of action but merely expands jurisdiction to include ship-to-shore torts.⁵ The Act also does not affect or amend federal⁶ or concurrent state⁷ jurisdiction of maritime torts.

In the case of a civil action against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act,⁸ or the Suits in Admiralty Act,⁹ as appropriate, provides the exclusive remedy.¹⁰

Practice Tip:

The requirement of the Admiralty Jurisdiction Extension Act that a written claim be presented to the agency owning or operating the vessel causing the injury or damage six months before suit is filed against the federal government¹¹ is a jurisdictional prerequisite to suit; the six-month provision acts as a statute of limitations time barring filing of the suit although the normal statute of limitations for filing suits is not tolled during the six-month waiting period.¹²

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Footnotes

- ¹ 46 U.S.C.A. § 30101.
- ² 46 U.S.C.A. § 30101(a).
- ³ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ⁴ *New York Trap Rock Corp. Petition of*, 172 F. Supp. 638 (S.D. N.Y. 1959).
- ⁵ *Louisville and N. R. Co. v. M/V Bayou Lacombe*, 597 F.2d 469 (5th Cir. 1979); *Jorsch v. LeBeau*, 449 F. Supp. 485 (N.D. Ill. 1978).
- ⁶ *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 90 S. Ct. 347, 24 L. Ed. 2d 371 (1969); *Pearson v. Northeast Airlines, Inc.*, 199 F. Supp. 538 (S.D. N.Y. 1961).
- ⁷ *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 93 S. Ct. 1590, 36 L. Ed. 2d 280 (1973).
- ⁸ §§ 101 to 103.
- ⁹ §§ 96 to 100.
- ¹⁰ 46 U.S.C.A. § 30101(c)(1).
- ¹¹ 46 U.S.C.A. § 30101(c)(2).
- ¹² *Loeber v. Bay Tankers, Inc.*, 924 F.2d 1340 (5th Cir. 1991).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 51. Effect of Admiralty Jurisdiction Extension Act—Standards for determining applicability

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  4, 22

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[Validity, construction, and application of Admiralty Jurisdiction Extension Act \(46 U.S.C.A. sec. 740\), 14 A.L.R. Fed. 664](#)

Forms

Forms relating to the Admiralty Jurisdiction Extension Act, generally, see Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

A court need not decide the merits of proximate causation issues to resolve a challenge to jurisdiction under the Extension of Admiralty Jurisdiction Act.¹For jurisdiction to lie over a tort action brought under the Admiralty Jurisdiction Extension Act,²both the locality test³and the connection test⁴required for maritime torts must be met.⁵The injury must be caused by a vessel on navigable water.⁶Also covered are injuries that result from acts of the vessel's personnel provided they are in some way connected with the vessel's operation.⁷Admiralty jurisdiction under the Act extends to shore-based workers who are injured by an appurtenance of a ship at a time and place not remote from a wrongful act of the ship owner.⁸However, an accident occurring on a pier and not involving a vessel on navigable water is not within the jurisdiction of the Act.⁹

Footnotes

- ¹ Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ² 46 U.S.C.A. § 30101.
- ³ § 69.
- ⁴ § 68.
- ⁵ Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ⁶ 46 U.S.C.A. § 30101(a).
A riverboat casino patron's injury resulting from the patron's fall upon the collapse of a stool against which she was leaning was an injury caused by a "vessel," within the meaning of the Extension of Admiralty Jurisdiction Act, where the stool was located on a riverboat, and the term "vessel" under the Act included the vessel's fixtures and furniture. *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006).
The claim of a worker who was injured when a boat being loaded aboard a tractor trailer fell and crushed him did not come within the Act where the boat was out of the water while the victim stood on shore and the boat came to rest beyond the water's edge. *Boudloche v. Conoco Oil Corp.*, 615 F.2d 687 (5th Cir. 1980).
- ⁷ *Gebhard v. S.S. Hawaiian Legislator*, 425 F.2d 1303 (9th Cir. 1970); *Hovland v. Fearnley & Eger*, 110 F. Supp. 657 (E.D. Pa. 1952).
The vessel itself or some accessory of it must be directly involved. *Interlake S. S. Co. v. Nielsen*, 338 F.2d 879 (6th Cir. 1964); *Clinton v. Joshua Hendy Corp.*, 285 F.2d 199 (9th Cir. 1960).
- ⁸ *Garrett v. Gutzeit*, 491 F.2d 228 (4th Cir. 1974).
- ⁹ *Ryan v. U.S.*, 304 F. Supp. 2d 678 (D. Md. 2003).

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E. Jurisdiction over the Subject Matter Involved

2. Places Within Jurisdiction

§ 52. Effect of Admiralty Jurisdiction Extension Act—Application to particular actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  4, 22

A.L.R. Library

[Liability in admiralty for collision between vessel and drawbridge structure](#), 134 A.L.R. Fed. 537

[Liability of vessel to state in admiralty action in rem for damages resulting from oil spill in navigable waters of state](#), 10 A.L.R. Fed. 956

Forms

Forms relating to the Admiralty Jurisdiction Extension Act, generally, see Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Law Reviews and Other Periodicals

Cardwell, [Beware! Defective Appurtenances: A Discussion of the "Substantial Relationship" Requirement for Invoking Admiralty Jurisdiction in the Products Liability Context](#), 36 Tul. Mar. L.J. 237 (Winter 2011)

The Admiralty Jurisdiction Extension Act¹ applies to such claims as those resulting from a barge striking a bridge,² a dock,³ or a levee.⁴ It also applies to an action for trespass and related claims for damage to marshland caused by a vessel on navigable water.⁵ A plaintiff injured on shore must allege that the injury was caused by a defective appurtenance of a ship on navigable waters.⁶ Moreover, the vessel or its defective appurtenance must be the proximate cause of the accident.⁷ The Admiralty Jurisdiction Extension Act also applies to:

- actions brought by various persons and entities alleging private or nongovernmental economic loss and property damages resulting from an explosion, fire, and sinking of a mobile offshore drilling unit, where the injuries incurred on land or in the seabed.⁸
- a claim for injuries sustained after an engineer became ill and caught a serious infection aboard an allegedly unsanitary vessel which was in the substantial possession and control of the United States, and that infection spread to the engineer's family, which occurred on land.⁹
- a tort action brought against a riverboat casino operator by a riverboat casino patron who was injured when the stool she was leaning against collapsed and she fell, if the riverboat was indefinitely, rather than permanently, moored to a pier on a navigable river at the time of the fall.¹⁰
- an action commenced by a shipowner seeking to limit potential liability for tort suits arising out of injuries to passengers while disembarking from a cruise ship, who had been struck and seriously injured by a car driven by another, intoxicated passenger.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Under nexus test for determining a court's admiralty jurisdiction, court possessed admiralty jurisdiction over cruise ship passenger's claim against ship owner and county in which port terminal was located, where alleged negligence in failing to provide safe unloading of cruise ship had potential to disrupt maritime commerce, and negligence occurred during disembarkation process. [Lipkin v. Norwegian Cruise Line Ltd.](#), 93 F. Supp. 3d 1311 (S.D. Fla. 2015).

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Footnotes

¹ 46 U.S.C.A. § 30101.

² [Harp v. Pine Bluff Sand and Gravel Co.](#), 750 So. 2d 226 (La. Ct. App. 3d Cir. 1999).

³ [Alton & Southern Ry. Co. v. Alton Transp. Co.](#), 79 Ill. App. 3d 591, 35 Ill. Dec. 339, 399 N.E.2d 173 (5th Dist. 1979).

⁴ [In re Ingram Barge Co.](#), 435 F. Supp. 2d 524 (E.D. La. 2006), *aff'd*, 351 Fed. Appx. 842 (5th Cir. 2009).

⁵ [Lakes of Gum Cove Hunting & Fishing, L.L.C. v. Weeks Marine, Inc.](#), 182 F. Supp. 2d 537 (W.D. La. 2001).

⁶ [Dahlen v. Gulf Crews, Inc.](#), 281 F.3d 487 (5th Cir. 2002).

A life raft that struck and injured a marine safety training employee, who was conducting a life raft drill on a pier, was not an "appurtenance" to the vessel from which the raft was launched, where the raft was not controlled by vessel personnel at the time it was being hoisted onto the pier when it struck the employee, and the crane operator was in control of the lifting procedure at all times. [Scott v. Trump Indiana, Inc.](#), 337 F.3d 939 (7th Cir. 2003).

⁷ [Magana v. Hammer & Steel, Inc.](#), 206 F. Supp. 2d 848 (S.D. Tex. 2002).

⁸ [In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010](#), 808 F. Supp. 2d 943 (E.D. La. 2011), [aff'd](#), 745 F.3d 157 (5th Cir. 2014).

⁹ [Crawford v. Electric Boat Corp.](#), 515 F. Supp. 2d 282 (D. Conn. 2007).

¹⁰ [Tagliere v. Harrah's Illinois Corp.](#), 445 F.3d 1012 (7th Cir. 2006).
As to the effect of mooring or docking on admiralty jurisdiction, see § 39.

¹¹ [Duluth Superior Excursions, Inc. v. Makela](#), 623 F.2d 1251 (8th Cir. 1980).

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2 Am. Jur. 2d Admiralty § 53

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E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 53. Generally

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  9.1

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[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

Treatises and Practice Aids

As to actions sounding in contract, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Forms

Forms relating to contract actions, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Basic principles in the common law of contracts readily apply in the maritime context.¹ Thus, federal courts sitting in admiralty adhere to the axiom that a contract should be interpreted so as to give meaning to all of its terms, presuming that every provision was intended to accomplish some purpose and that none are deemed superfluous.²

Courts of admiralty have jurisdiction of causes of action arising out of maritime contracts,³ either for direct enforcement or involving matters arising as the result of such contracts.⁴ When a contract relates to ships in their use as ships or to commerce or transportation in navigable waters, there is admiralty jurisdiction.⁵

The use of a nonmaritime contract as a defense does not deprive an admiralty court of jurisdiction which it otherwise has.⁶

Caution:

Contractual claims of a maritime nature against or involving the United States as a party may be limited by statute, such as the Suits in Admiralty Act⁷ and the Public Vessels Act.⁸

CUMULATIVE SUPPLEMENT

Cases:

A contract for wharfage is a maritime contract and within district court's admiralty jurisdiction if wharfage is provided to a specific vessel. *U.S. Const. art. 3, § 2, cl. 1*; 28 U.S.C.A. § 1331. *Bartell Hotels v. S/L Talus*, 445 F. Supp. 3d 983 (S.D. Cal. 2020).

Forward freight agreement (FFA) to buy and/or sell freight futures was not a contract whose principal objective was the furtherance of maritime commerce, and therefore district court lacked federal maritime jurisdiction to enforce English judgment for breach of that contract; FFA was not used for hedging and managing market risks relating to employment of marine vessels, but instead, was used by judgment creditor as a speculative trade and potential source of revenue separate and distinct from its maritime business. 28 U.S.C.A. § 1333(1). *D'Amico Dry Limited v. Primera Maritime (Hellas) Limited*, 201 F. Supp. 3d 399 (S.D. N.Y. 2016).

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Footnotes

- ¹ *Clevo Co. v. Hecny Transp., Inc.*, 715 F.3d 1189 (9th Cir. 2013).
- ² *Foster Wheeler Energy Corp. v. An Ning Jiang MV*, 383 F.3d 349 (5th Cir. 2004).
- ³ *Union Fish Co. v. Erickson*, 248 U.S. 308, 39 S. Ct. 112, 63 L. Ed. 261 (1919); *The Resolute*, 168 U.S. 437, 18 S. Ct. 112, 42 L. Ed. 533 (1897).
- ⁴ *Archawski v. Hanioti*, 350 U.S. 532, 76 S. Ct. 617, 100 L. Ed. 676 (1956).

⁵ Commercial Union Ins. Co. v. Blue Water Yacht Club Ass'n, 239 F. Supp. 2d 316 (E.D. N.Y. 2003).

⁶ Armour & Co. v. Ft. Morgan S.S. Co., 270 U.S. 253, 46 S. Ct. 212, 70 L. Ed. 571 (1926); William P. Brooks Const. Co., Inc. v. Guthrie, 614 F.2d 509 (5th Cir. 1980).

⁷ §§ 106 to 114.

⁸ §§ 101 to 103.

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E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 54. Maritime nature of contract

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [10\(.5\)](#) to [10\(2\)](#)

A.L.R. Library

[Admiralty jurisdiction over contracts for services in connection with off-shore drilling operations](#), 114 A.L.R. Fed. 623

[Comment Note.—Admiralty jurisdiction in matters of contract](#), 29 A.L.R. Fed. 325

Law Reviews and Other Periodicals

Roth, [Gulf Coast v. Newlin: Reaffirming the Fundamental Notions of Admiralty Jurisdiction](#), 86 Tul. L. Rev. 1397 (June 2012)

The test of the maritime nature of a contract, as determinative of admiralty jurisdiction, is the nature of the subject matter, i.e., whether the nature of the service or transaction was maritime.¹ There is no clear test for whether the subject matter of a contract is maritime as will bring a contract within admiralty jurisdiction;² instead, courts look to precedent and reason by analogy.³ The contract may relate to a matter, transaction, or service that depends on, assists, or furthers transportation or navigation on navigable waters;⁴ the research and recovery of shipwrecked vessels;⁵ or maritime employment.⁶ The mere fact that a vessel⁷ or a marina⁸ is involved will not bring a cause within the jurisdiction of the admiralty court; similarly, the sale of goods by itself is not maritime merely because the seller agrees to ship the goods by sea to the buyer.⁹

The general rule is that admiralty jurisdiction arises only when the subject matter of the contract is “purely” or “wholly” maritime in nature¹⁰ though this rule is subject to certain exceptions.¹¹

Neither the place where the contract is made nor the place where obligations arising therefrom are to be performed is in itself conclusive of the maritime nature of a contract.¹²

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a contract is a maritime one, maritime commerce has evolved and is often inseparable from some land-based obligations. [Barrios v. Centaur, L.L.C.](#), 942 F.3d 670 (5th Cir. 2019).

A contract may be maritime in nature, even if it involves activity on land, if the principal objective is maritime commerce. [Atlantic Specialty Insurance Company v. Karl’s Boat Shop, Inc.](#), 480 F. Supp. 3d 322 (D. Mass. 2020).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
One jurisdiction has determined that the factors considered in determining whether a contract is maritime are: (1) what the specific work order in effect at the time of injury provided; (2) what work the crew assigned under the work order actually did; (3) whether the crew was assigned to work aboard a vessel in navigable waters; (4) the extent to which the work being done related to the mission of that vessel; (5) the principal work of the injured worker; and (6) what work the injured worker was actually doing at the time of the injury. [Hoda v. Rowan Companies, Inc.](#), 419 F.3d 379 (5th Cir. 2005).
- ² [Thibodeaux v. Vamos Oil & Gas Co.](#), 487 F.3d 288 (5th Cir. 2007); [La Reunion Francaise SA v. Barnes](#), 247 F.3d 1022 (9th Cir. 2001).
- ³ [La Reunion Francaise SA v. Barnes](#), 247 F.3d 1022 (9th Cir. 2001).
- ⁴ [The Eclipse](#), 135 U.S. 599, 10 S. Ct. 873, 34 L. Ed. 269 (1890); [Alphamate Commodity GMBH v. CHS Europe SA](#), 627 F.3d 183 (5th Cir. 2010).
A liability insurance policy covering a yacht dealership and a marina was not maritime in nature where the yacht-dealer provisions of the policy related to boats as objects of commerce, not as agents of maritime commerce. [New Hampshire Ins. Co. v. Home Sav. and Loan Co. of Youngstown, Ohio](#), 581 F.3d 420 (6th Cir. 2009).
- ⁵ [Williamson v. Recovery Ltd. Partnership](#), 542 F.3d 43 (2d Cir. 2008); [Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel or Vessels](#), 636 F.3d 1338 (11th Cir. 2011).
- ⁶ [Gulf Coast Shell and Aggregate LP v. Newlin](#), 623 F.3d 235 (5th Cir. 2010).
- ⁷ [Williamson v. Recovery Ltd. Partnership](#), 542 F.3d 43 (2d Cir. 2008); [Gulf Coast Shell and Aggregate LP v. Newlin](#), 623 F.3d 235 (5th Cir. 2010) (the transfer of title of a vessel to a third party did not relate in any meaningful way to commerce on navigable waters or the use of the oyster dredge as a dredge); [New Hampshire Ins. Co. v. Home Sav. and Loan Co. of Youngstown, Ohio](#), 581 F.3d 420 (6th Cir. 2009) (a liability insurance policy covering a yacht dealership and a marina fell outside the scope of federal maritime jurisdiction).
A passenger vessel surety bond, under which a surety agreed to refund a passenger monies for unperformed cruises on

a vessel, was not a maritime contract and thus could not give rise to a maritime lien, where the bond was a consumer protection measure, with no direct relationship to the operation of the vessel. [Effjohn Intern. Cruise Holdings, Inc. v. A&L Sales, Inc.](#), 346 F.3d 552, 56 Fed. R. Serv. 3d 410 (5th Cir. 2003).

⁸ [New Hampshire Ins. Co. v. Home Sav. and Loan Co. of Youngstown, Ohio](#), 581 F.3d 420 (6th Cir. 2009).

⁹ [Alphamate Commodity GMBH v. CHS Europe SA](#), 627 F.3d 183 (5th Cir. 2010).

¹⁰ [The Eclipse](#), 135 U.S. 599, 10 S. Ct. 873, 34 L. Ed. 269 (1890); [Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Div. of Ace Young Inc.](#), 109 F.3d 105, 37 Fed. R. Serv. 3d 531 (2d Cir. 1997); [Thrustmaster of Texas, Inc. v. U.S.](#), 59 Fed. Cl. 672 (2004).

¹¹ As to the jurisdiction of contracts of a mixed maritime and nonmaritime nature, see § 57.

¹² [North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.](#), 249 U.S. 119, 39 S. Ct. 221, 63 L. Ed. 510 (1919); [New England Mut. Marine Ins. Co. v. Dunham](#), 78 U.S. 1, 20 L. Ed. 90, 1870 WL 12885 (1870); [Hoda v. Rowan Companies, Inc.](#), 419 F.3d 379 (5th Cir. 2005).

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2 Am. Jur. 2d Admiralty § 55

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Admiralty

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 55. Third-party rights; agency contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  10(2)

A.L.R. Library

[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

Forms

Forms relating to claim to vessel by agent, bailee, attorney, or master, generally, see Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

To the extent admiralty law recognizes third-party beneficiaries' rights, such rights may be sued on in admiralty.¹

Agency contracts can be the basis for admiralty jurisdiction if the nature and subject matter of the contract is maritime.² There is no per se exception of agency contracts from admiralty jurisdiction because there is nothing in the nature of an agency relationship that necessarily excludes such relationships from the realm of maritime commerce.³ In determining whether admiralty jurisdiction over an agency contract exists, the court should look to the subject matter of the agency contract and determine whether the services performed are maritime in nature; for these purposes, rubrics such as “general agent” or “special agent” reveal nothing about whether the services performed are maritime in nature.⁴ Thus, where a direct contract is clearly maritime in nature, admiralty jurisdiction should extend to third parties, such as a fuel supplier acting as a ship's

agent.⁵ However, where the only obligation of a marine services company to a petroleum company is to pay for the oil, which is then resold to third parties without reference to the oil's intended use, the contract is not maritime in nature.⁶

A contract between a manufacturer and its agent confers admiralty jurisdiction on the district court in a breach of contract dispute, even if the contract is a requirements contract or executory in nature,⁷ and even if many obligations under the agreement are performed on land,⁸ where the sole purpose of the contract is to facilitate and make possible maritime operations.⁹

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Footnotes

- ¹ [Crumady v. The Joachim Hendrik Fisser](#), 358 U.S. 423, 79 S. Ct. 445, 3 L. Ed. 2d 413 (1959).
- ² [Shipping Financial Services Corp. v. Drakos](#), 140 F.3d 129 (2d Cir. 1998).
- ³ [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
- ⁴ [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
- ⁵ [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991).
- ⁶ [Marubeni Intern. Petroleum \(Singapore\) Pte Ltd. v. Prestige Marine Services Pte Ltd.](#), 591 F. Supp. 2d 386 (S.D. N.Y. 2009).
- ⁷ [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).
- ⁸ [ProShipLine Inc. v. Aspen Infrastructures Ltd.](#), 609 F.3d 960 (9th Cir. 2010).
- ⁹ [ProShipLine Inc. v. Aspen Infrastructures Ltd.](#), 609 F.3d 960 (9th Cir. 2010).

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2 Am. Jur. 2d Admiralty § 56

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 56. Agreements or transactions preliminary or subsequent to maritime contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  10(2) to 10(4), 13

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[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

The preliminary contract doctrine excludes preliminary services from admiralty jurisdiction.¹Contracts that are preliminary to, as opposed to part of, maritime contracts are too remote from maritime commerce for admiralty jurisdiction to exist over disputes arising under contracts.²Thus, general agency contracts whereby one provides certain landside marine support services, such as cargo solicitation, procurement of supplies, crews, stevedores, or tugs, are not cognizable in admiralty since the services are considered to be of a nature preliminary to the voyage.³A broker's contract to negotiate a maritime contract is not considered a maritime contract⁴and neither is a financing contract, which is preliminary to obtaining maritime insurance within admiralty jurisdiction.⁵A charter broker's agreement to act as broker for a charter party is preliminary to a maritime contract and outside admiralty jurisdiction.⁶However, a contract which requires both preliminary and nonpreliminary tasks may factually support the exercise of admiralty jurisdiction.⁷

Although a charter party agreement is a maritime agreement, a vessel owner's agreement to contribute to its lessee's settlement of a cargo claim is not maritime in nature and thus not subject to admiralty jurisdiction.⁸

CUMULATIVE SUPPLEMENT

Cases:

Contracts for purchase and sale of pig iron, as commodity, were non-maritime agreements, and thus did not give rise to maritime claim capable of supporting a Rule B maritime attachment, since neither pig iron nor its sale related directly and substantially to operation of vessel or its navigation; although contracts required seller to arrange ocean transport of pig iron and to charter vessel that met certain specifications, those responsibilities were incidental to pig iron sale itself and contracts otherwise did not obligate seller to serve as ocean carrier by transporting commodity itself or create contractual rights or duties pertaining to operation, management, or navigation of vessel at sea. [Supplemental Admiralty and Maritime Claims Rule B](#), 28 U.S.C.A.; [Fed. R. Civ. P. 9\(h\)](#). [Stemcor USA, Inc. v. America Metals Trading, LLP](#), 199 F. Supp. 3d 1102 (E.D. La. 2016).

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Footnotes

- ¹ [Hotung v. A Cargo of a Crate Containing Nine Boxes of Documents Shipped Aboard the M/V HANJIN NAGOYA](#), 452 F. Supp. 2d 564 (D.N.J. 2006).
- ² [Penguin Maritime Ltd. v. Lee & Muirhead Ltd.](#), 588 F. Supp. 2d 522 (S.D. N.Y. 2008); [Catlin \(Syndicate 2003\) at Lloyd's v. San Juan Towing & Marine Services, Inc.](#), 946 F. Supp. 2d 256 (D.P.R. 2013); [Commercial Union Ins. Co. v. Detyens Shipyard, Inc.](#), 147 F. Supp. 2d 413 (D.S.C. 2001).
- ³ [Nehring v. Steamship M/V Point Vail](#), 901 F.2d 1044 (11th Cir. 1990).
- ⁴ [The Harvey and Henry](#), 86 F. 656 (C.C.A. 2d Cir. 1898); [Rhederei Actien Gesellschaft Oceana v. Clutha Shipping Co.](#), 226 F. 339 (D. Md. 1915).
- ⁵ [Planned Premium Services of Louisiana, Inc. v. International Ins. Agents, Inc.](#), 928 F.2d 164 (5th Cir. 1991).
- ⁶ [Boyd, Weir & Sewell, Inc. v. Fritzen-Halcyon Lijn, Inc.](#), 709 F. Supp. 77 (S.D. N.Y. 1989).
- ⁷ [Ingersoll Mill. Mach. Co. v. M/V Bodena](#), 829 F.2d 293 (2d Cir. 1987).
- ⁸ [Fednav, Ltd. v. Isoramar, S.A.](#), 925 F.2d 599 (2d Cir. 1991).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 57. Contracts embracing both maritime and nonmaritime matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  10(5)

A.L.R. Library

[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

An admiralty court will retain jurisdiction over a contract that is not wholly maritime in nature if either: (1) the nonmaritime feature of the contract is merely incidental;¹ or (2) the nonmaritime feature of the contract is separable from the maritime elements, so that it may be severed and litigated independently without prejudice to any party.² Thus, where a contract contains both maritime and nonmaritime covenants and is divisible, admiralty has no jurisdiction of the nonmaritime part.³ If the contract is indivisible, the court lacks admiralty jurisdiction over the dispute.⁴

Although a court may consider a mixed contract maritime if the contract is primarily maritime and the contract's nonmaritime elements are incidental to that primary purpose,⁵ in applying the incidental exception to the general rule that mixed contracts fall outside admiralty jurisdiction, the focus is on whether the principal objective of a contract is maritime commerce rather than on whether the nonmaritime components are properly characterized as more than incidental or merely incidental to the contract.⁶ Thus, as long as a bill of lading requires substantial carriage of goods by sea, its purpose is to effectuate maritime commerce, and it thus qualifies as a maritime contract, although it also provides for some land carriage.⁷

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Footnotes

- ¹ American Stevedores v. Porello, 330 U.S. 446, 67 S. Ct. 847, 91 L. Ed. 1011 (1947); Folksamerica Reinsurance Co. v. Clean Water of New York, Inc., 413 F.3d 307 (2d Cir. 2005); Sea-Land Service, Inc. v. Danzig, 211 F.3d 1373 (Fed. Cir. 2000); Orient Overseas Container Line v. John T. Clark & Sons of Boston, Inc., 229 F. Supp. 2d 4 (D. Mass. 2002).
- ² Folksamerica Reinsurance Co. v. Clean Water of New York, Inc., 413 F.3d 307 (2d Cir. 2005); Alphamate Commodity GMBH v. CHS Europe SA, 627 F.3d 183 (5th Cir. 2010); Sea-Land Service, Inc. v. Danzig, 211 F.3d 1373 (Fed. Cir. 2000).
- ³ Natasha, Inc. v. Evita Marine Charters, Inc., 763 F.2d 468, 2 Fed. R. Serv. 3d 422 (1st Cir. 1985); Emmons v. Pacific Indem. Co., 146 Tex. 496, 208 S.W.2d 884 (1948).
- ⁴ Berkshire Fashions, Inc. v. M.V. Hakusan II, 954 F.2d 874, 22 Fed. R. Serv. 3d 1180 (3d Cir. 1992); Alphamate Commodity GMBH v. CHS Europe SA, 627 F.3d 183 (5th Cir. 2010); Chi Shun Hua Steel Co., Ltd. v. Crest Tankers, Inc., 708 F. Supp. 18 (D.N.H. 1989).
- ⁵ Alphamate Commodity GMBH v. CHS Europe SA, 627 F.3d 183 (5th Cir. 2010).
- ⁶ Folksamerica Reinsurance Co. v. Clean Water of New York, Inc., 413 F.3d 307 (2d Cir. 2005).
- ⁷ Norfolk Southern Railway Co. v. Kirby, 543 U.S. 14, 125 S. Ct. 385, 160 L. Ed. 2d 283 (2004).

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2 Am. Jur. 2d Admiralty § 58

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 58. Construction of vessels

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  11

A.L.R. Library

[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

Historically, ship construction is not regarded as a traditional maritime activity, and a ship under construction has not evolved into “vessel” status.¹ Thus, contracts for the construction of vessels, or for labor performed or materials supplied for their construction, are not maritime contracts cognizable in admiralty² although contracts for supplies and repair are within admiralty jurisdiction.³

Since contracts relating to the construction of a ship are not within admiralty jurisdiction, neither are warranty claims grounded in such contracts.⁴ A ship builder’s claim for partition of a vessel is a breach of contract dispute over the price, terms, and conditions of a contract to build a vessel and, thus, the claim does not support the exercise of admiralty jurisdiction.⁵

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Footnotes

¹ [Orgeron v. Avondale Shipyards, Inc., 561 So. 2d 38 \(La. 1990\)](#).
As to what is a vessel, see [§ 35](#).

- ² The Jack-O-Lantern, 258 U.S. 96, 42 S. Ct. 243, 66 L. Ed. 482 (1922); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S. Ct. 157, 66 L. Ed. 321, 25 A.L.R. 1008 (1922); Primera Maritime Ltd. v. Jiangsu Eastern Heavy Indus. Co. Ltd., 355 Fed. Appx. 477 (2d Cir. 2009); Employers Ins. of Wausau v. Suwannee River Spa Lines, Inc., 866 F.2d 752, 8 U.C.C. Rep. Serv. 2d 659 (5th Cir. 1989); Robert E. Blake Inc. v. Excel Environmental, 104 F.3d 1158 (9th Cir. 1997); Chase Manhattan Financial Services, Inc. v. McMillian, 896 F.2d 452, 12 U.C.C. Rep. Serv. 2d 97 (10th Cir. 1990); Cooper v. Meridian Yachts, Ltd., 575 F.3d 1151 (11th Cir. 2009); Abdelnour v. Bassett Custom Boatworks, Inc., 614 F. Supp. 2d 123 (D. Mass. 2009); B & B Salvage & Rigging, Inc. v. M/V North Bend, 548 F. Supp. 123 (E.D. Mo. 1982), *aff'd*, 716 F.2d 908 (8th Cir. 1983); In re Consolidated Coal Co., 228 F. Supp. 2d 764 (N.D. W. Va. 2001); Thrustmaster of Texas, Inc. v. U.S., 59 Fed. Cl. 672 (2004); Islander Yachts, Inc. v. One Freeport 36' Vessel, 173 Cal. App. 3d 1081, 219 Cal. Rptr. 654 (1st Dist. 1985).
- ³ § 61.
- ⁴ East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865, 1 U.C.C. Rep. Serv. 2d 609 (1986).
- ⁵ Privilege Yachting, Inc. v. Teed, 849 F. Supp. 298 (D. Del. 1994).

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II. Jurisdiction of Admiralty Courts


E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 59. Construction of vessels—Reconstruction of vessels

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [11](#), [14](#)

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[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

The rule that admiralty has no jurisdiction over contractual claims related to the construction of a vessel¹ does not apply to the reconstruction of a vessel, as distinguished from original construction,² regardless of how extensive the reconstruction may be.³

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Footnotes

¹ § 58.

² *The Jack-O-Lantern*, 258 U.S. 96, 42 S. Ct. 243, 66 L. Ed. 482 (1922); *La Esperanza de P.R., Inc. v. Perez y Cia. de Puerto Rico, Inc.*, 124 F.3d 10 (1st Cir. 1997); *The Susquehanna*, 267 F. 811 (C.C.A. 2d Cir. 1920); *Vera, Inc. v. Tug Dakota*, 769 F. Supp. 451 (E.D. N.Y. 1991); *Todd Marine Enterprises, Inc. v. Carter Machinery Co., Inc.*, 898 F. Supp. 341 (E.D. Va. 1995).

³ *The Ky-III*, 50 F.2d 70 (C.C.A. 6th Cir. 1931).
As to what is a vessel, see § 35.

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2 Am. Jur. 2d Admiralty § 60

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 60. Purchase or sale of vessel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  10(2)

A.L.R. Library

[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

A contract for the sale of a vessel is generally not within a federal court's admiralty jurisdiction because such a contract is not maritime in nature.¹ Thus, a claim for the breach of a purchase agreement for a ship, which agreement does not constitute a maritime contract, does not invoke admiralty jurisdiction.² Similarly, a ship purchaser's action to obtain title to or possession of a ship, and for security pending arbitration against the shipbuilder, does not constitute a maritime action over which admiralty jurisdiction may be exercised because the action is a pure and simple contract dispute between the shipbuilder and the purchaser.³

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¹ [Twin City Barge & Towing Co. v. Aiple](#), 709 F.2d 507 (8th Cir. 1983); [Herman Family Revocable Trust v. Teddy Bear](#), 254 F.3d 802 (9th Cir. 2001); [Cooper v. Meridian Yachts, Ltd.](#), 575 F.3d 1151 (11th Cir. 2009); [International Shipping Co., S.A. v. Hydra Offshore, Inc.](#), 675 F. Supp. 146, 9 Fed. R. Serv. 3d 1017 (S.D. N.Y. 1987), order aff'd, 875 F.2d 388, 13 Fed. R. Serv. 3d 1134 (2d Cir. 1989).

² [Cary Marine, Inc. v. Motorvessel Papillon](#), 872 F.2d 751 (6th Cir. 1989).

³ J.A.R., Inc. v. M/V Lady Lucille, 963 F.2d 96 (5th Cir. 1992).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

3. Actions Sounding in Contract

§ 61. Repair and supply of vessels

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  14

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[Comment Note.—Admiralty jurisdiction in matters of contract, 29 A.L.R. Fed. 325](#)

Forms

Forms relating to repair and supply, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

Contracts to repair a ship are within admiralty jurisdiction¹ as are contracts to provide supplies to a vessel.² Accordingly, a court has admiralty jurisdiction over an action arising out of a contract to repair a ship.³ A contract for the repair or supply of a vessel after it has been completed so as to be available for navigation purposes is a maritime contract within admiralty jurisdiction.⁴ This rule applies whether the repairs are made to a vessel while in a floating dock⁵ or a dry dock⁶ or while it is afloat.⁷ Additionally, an agreement for transporting supplies to a well site in a vessel is a maritime contract to which maritime law applies.⁸

However, a contract for repairs on a vessel taken out of service;⁹ for supplies to a floating structure that is not a vessel;¹⁰ for equipment for a vessel being constructed by another;¹¹ undertaken to advance the sale of a vessel;¹² or for supplies to a ship that

is not engaged in navigation at the time the supplies are furnished¹³ is not a maritime contract and is not within the jurisdiction of admiralty. For a contract to work on a vessel to be maritime, the vessel must be “launched” and “completed” before the contract becomes a binding obligation; if the contract to work on a vessel is entered before the vessel is “launched” and “completed,” the mere fact that goods and services are not provided pursuant to the contract until later cannot retroactively bestow maritime status on the contract.¹⁴

Cases have differentiated between a contract to supply a single vessel and one to supply several vessels over a period of time and have held that the latter is not maritime.¹⁵

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Footnotes

- ¹ [Fairest-Knight v. Marine World Distributors, Inc.](#), 652 F.3d 94 (1st Cir. 2011); [One Beacon Ins. Co. v. Crowley Marine Services, Inc.](#), 648 F.3d 258 (5th Cir. 2011); [Robert E. Blake Inc. v. Excel Environmental](#), 104 F.3d 1158 (9th Cir. 1997); [Diesel “Repower,” Inc. v. Islander Investments Ltd.](#), 271 F.3d 1318 (11th Cir. 2001); [Vera, Inc. v. Tug Dakota](#), 769 F. Supp. 451 (E.D. N.Y. 1991); [Todd Marine Enterprises, Inc. v. Carter Machinery Co., Inc.](#), 898 F. Supp. 341 (E.D. Va. 1995); [In re Consolidated Coal Co.](#), 228 F. Supp. 2d 764 (N.D. W. Va. 2001); [Thrustmaster of Texas, Inc. v. U.S.](#), 59 Fed. Cl. 672 (2004); [Addison v. Ohio River Co.](#), 120 Ohio App. 3d 172, 697 N.E.2d 260 (1st Dist. Hamilton County 1997).
- ² [Exxon Corp. v. Central Gulf Lines, Inc.](#), 500 U.S. 603, 111 S. Ct. 2071, 114 L. Ed. 2d 649 (1991); [Garanti Finansal Kiralama A.S. v. Aqua Marine and Trading Inc.](#), 697 F.3d 59 (2d Cir. 2012); [McAllister Towing & Transp. Co., Inc. v. Thorn’s Diesel Service, Inc.](#), 131 F. Supp. 2d 1296 (M.D. Ala. 2001).
A seller’s claims against a buyer for breach of contract and unjust enrichment arising from the alleged nonpayment of bunker fuel purchased through a bunker trader were maritime in nature, as required for admiralty jurisdiction, regardless of whether the fuel was delivered by a third-party bunker trader, where the principal objective of the transaction was maritime commerce. [Equatorial Marine Fuel Management Services Pte Ltd. v. MISC Berhad](#), 591 F.3d 1208 (9th Cir. 2010).
As to third-party or agency contracts as within admiralty jurisdiction, see § 55.
- ³ [New Moon Shipping Co., Ltd. v. MAN B & W Diesel AG](#), 121 F.3d 24 (2d Cir. 1997); [Sweet Pea Marine, Ltd. v. APJ Marine, Inc.](#), 411 F.3d 1242 (11th Cir. 2005); [B & B Schiffahrts GmbH & Co. v. American Diesel & Ship Repairs, Inc.](#), 136 F. Supp. 2d 590 (E.D. La. 2001).
- ⁴ [The Jack-O-Lantern](#), 258 U.S. 96, 42 S. Ct. 243, 66 L. Ed. 482 (1922); [The St. Lawrence](#), 66 U.S. 522, 17 L. Ed. 180, 1861 WL 7685 (1861); [Peyroux v. Howard](#), 32 U.S. 324, 8 L. Ed. 700, 1833 WL 4209 (1833); [Farwest Steel Corp. v. Barge Sea Span 241](#), 769 F.2d 620 (9th Cir. 1985); [Southwest Marine of San Francisco, Inc. v. U.S.](#), 896 F.2d 532 (Fed. Cir. 1990); [Goings v. Falcon Carriers, Inc.](#), 729 F. Supp. 1140 (E.D. Tex. 1989).
- ⁵ [Gonsalves v. Morse Dry Dock & Repair Co.](#), 266 U.S. 171, 45 S. Ct. 39, 69 L. Ed. 228 (1924).
- ⁶ [Perry v. Haines](#), 191 U.S. 17, 24 S. Ct. 8, 48 L. Ed. 73 (1903).
As to whether a ship in dry dock is a “vessel,” see § 39.
- ⁷ [North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.](#), 249 U.S. 119, 39 S. Ct. 221, 63 L. Ed. 510 (1919).
- ⁸ [Agip Petroleum Co., Inc. v. Gulf Island Fabrication, Inc.](#), 17 F. Supp. 2d 658 (S.D. Tex. 1998).
- ⁹ [Arques v. National Superior Co.](#), 67 Cal. App. 2d 763, 155 P.2d 643 (1st Dist. 1945).
- ¹⁰ [Muellerweisse v. Pile Driver E.O.A.](#), 69 F. 1005 (E.D. Mich. 1894).
- ¹¹ [Bill Fowler, Inc. v. Stadler](#), 558 F. Supp. 1115 (S.D. Fla. 1983).
- ¹² [Gaster Marine Recovery & Sales, Inc. v. M/V The Restless I](#), 33 F. Supp. 2d 1333 (S.D. Fla. 1998).
- ¹³ [The W.T. Blunt](#), 291 F. 899 (E.D. Mich. 1923).

¹⁴ Hyundai Heavy Industries Co., Ltd. v. M/V Saibos FDS, 163 F. Supp. 2d 1307 (N.D. Ala. 2001).

¹⁵ The Walter Adams, 253 F. 20 (C.C.A. 1st Cir. 1918), *aff'd*, 254 U.S. 1, 41 S. Ct. 1, 65 L. Ed. 97 (1920); Jones v. Berwick Bay Oil Co., Inc., 697 F. Supp. 260 (E.D. La. 1988).

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2 Am. Jur. 2d Admiralty § 62

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E. Jurisdiction over the Subject Matter Involved

4. Maritime Service Claims

§ 62. Services considered maritime

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[Admiralty jurisdiction over contracts for services in connection with off-shore drilling operations](#), 114 A.L.R. Fed. 623

[Comment Note.—Admiralty jurisdiction in matters of contract](#), 29 A.L.R. Fed. 325

The key to determining whether a contract falls within admiralty is whether the services performed under the contract are maritime in nature, and the character of the work to be performed is determinative, not the contract's value to the shipping industry.¹ Services rendered in the repair of a ship are maritime;² however, those rendered in its construction are not.³

The following agreements were found to be maritime and thus within federal admiralty jurisdiction:

- a dredging contract, where the objective of the contract was dredging a navigable waterway in a port that serviced international and national commerce⁴
- a contract to remove a sunken ship from the navigable waters of a harbor⁵
- noncompete agreements and nondisclosure agreements relating to work aboard a shipwreck recovery vessel⁶
- a contract between a corporation engaged in deep sea exploration and recovery and a researcher, to provide research to assist in locating and recovering a sunken vessel⁷
- a contract wherein a corporation agreed to solicit sailing trainees for a voyage⁸

A specialty services contract related to oil and gas exploration and drilling takes on a maritime character when its performance is more than incidentally related to the execution of the vessel's mission.⁹ Contracts to drill an offshore well and to furnish the rig to drill are maritime, even where they do not specifically refer to a vessel, since drilling usually involves the use of a drilling barge, which is a vessel.¹⁰ However, where a drilling rig's status as a vessel is only incidental to its purpose of

serving as a work platform for the execution of a services contract, the contract is not maritime in character.¹¹

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Footnotes

¹ [Effjohn Intern. Cruise Holdings, Inc. v. A&L Sales, Inc.](#), 346 F.3d 552, 56 Fed. R. Serv. 3d 410 (5th Cir. 2003).

² § 61.

³ § 58.

⁴ [Misener Marine Const., Inc. v. Norfolk Dredging Co.](#), 594 F.3d 832 (11th Cir. 2010).
In contrast, Army Corps of Engineers' contracts with a village and state division of coastal management were not maritime contracts, in the village's action alleging the Army Corps of Engineers failed to adequately protect and renourish the village's beaches when implementing a harbor dredging project, where the principal objective of the alleged contracts was not maritime commerce but the preservation of area beaches. [Village of Bald Head Island v. U.S. Army Corps of Engineers](#), 714 F.3d 186 (4th Cir. 2013).

⁵ [Puerto Rico Ports Authority v. Umpierre-Solares](#), 456 F.3d 220 (1st Cir. 2006).

⁶ [Williamson v. Recovery Ltd. Partnership](#), 542 F.3d 43 (2d Cir. 2008).

⁷ [Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel or Vessels](#), 636 F.3d 1338 (11th Cir. 2011).

⁸ [American Sail Training Ass'n v. Litchfield](#), 705 F. Supp. 75 (D.R.I. 1989).

⁹ [Hoda v. Rowan Companies, Inc.](#), 419 F.3d 379 (5th Cir. 2005).

¹⁰ [Lewis v. Glendel Drilling Co.](#), 898 F.2d 1083 (5th Cir. 1990).
As to what is a vessel, see § 35.

¹¹ [Domingue v. Ocean Drilling and Exploration Co.](#), 923 F.2d 393 (5th Cir. 1991).

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II. Jurisdiction of Admiralty Courts

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4. Maritime Service Claims

§ 63. Services considered maritime—Types of employment

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[Admiralty jurisdiction over contracts for services in connection with off-shore drilling operations](#), 114 A.L.R. Fed. 623

[Comment Note.—Admiralty jurisdiction in matters of contract](#), 29 A.L.R. Fed. 325

Among the employees whose services are ordinarily considered as of a maritime nature are seamen,¹including masters,²pilots,³cooks, carpenters, stewards, and surgeons;⁴and fishermen on board a vessel.⁵Even the fact that an employee's contract does not include work of a maritime nature, and that the work at the time of the accident sued for was outside his or her regular employment, does not necessarily preclude the conclusion that the employee was, at the time of the accident, employed in maritime service.⁶

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Footnotes

¹ [Socony-Vacuum Oil Co. v. Smith](#), 305 U.S. 424, 59 S. Ct. 262, 83 L. Ed. 265 (1939); [Blanco v. Phoenix Compania De Navegacion, S. A.](#), 304 F.2d 13, 9 A.L.R.3d 410 (4th Cir. 1962); [Brinkman v. Oil Transfer Corporation](#), 300 N.Y. 48, 88 N.E.2d 817, 13 A.L.R.2d 623 (1949).

As to a general discussion of the roles and functions of officers and crews of vessels, see [Am. Jur. 2d, Shipping §§ 214 to 343](#).

As to who is a seaman under the Jones Act, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §](#)

35.

As to jurisdiction of a seaman's claim for wages, see [Am. Jur. 2d, Shipping § 282](#).

² [Warner v. Goltra](#), 293 U.S. 155, 55 S. Ct. 46, 79 L. Ed. 254 (1934).

³ [Evans v. United Arab Shipping Co.](#), 767 F. Supp. 1284 (D.N.J. 1991), judgment aff'd, 4 F.3d 207 (3d Cir. 1993).

⁴ [Doolittle v. Knobloch](#), 39 F. 40 (D.S.C. 1889).

⁵ [North Alaska Salmon Co. v. Larsen](#), 220 F. 93 (C.C.A. 9th Cir. 1915); [Cummings v. Miller Time](#), 705 F. Supp. 62 (D.P.R. 1988); [Alaska Packers' Ass'n v. Industrial Accident Commission of California](#), 200 Cal. 579, 253 P. 926 (1927), aff'd, 276 U.S. 467, 48 S. Ct. 346, 72 L. Ed. 656 (1928).

Fishermen are in maritime service whether they receive wages or are serving on the "lay basis" of compensation—that is, for a percentage of the profits from the catch. [Putnam v. Lower](#), 236 F.2d 561 (9th Cir. 1956).

⁶ [Nogueira v. New York, N.H. & H.R. Co.](#), 281 U.S. 128, 50 S. Ct. 303, 74 L. Ed. 754 (1930); [Arcand v. Gutterson & Gould](#), 91 N.H. 194, 16 A.2d 697 (1940).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

4. Maritime Service Claims

§ 64. Services considered nonmaritime

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Services that are not considered maritime, and therefore not within admiralty jurisdiction, include:

- services performed on a vessel that has never been in commission or used in navigation,¹ or is still in the process of construction;²
- services associated with an offshore oil drilling platform followed by later work orders;³
- an agreement to offer reliable information concerning smuggling operations in exchange for compensation, even though the subject of the agreement involved the use of a private vessel in a customs operation;⁴
- a contract to provide live bait, sports-fishing, and charter boats to the public;⁵
- services of one whose duties merely require watching the pier and the goods on it;⁶
- temporary services rendered aboard a vessel by one who only occasionally boards a vessel tied to a dock in order to facilitate the work of unloading.⁷

Litigation related to stevedoring contracts and services is within admiralty jurisdiction.⁸ The service of one employed to supervise stevedores is also within admiralty jurisdiction.⁹ Since loading and stowing a ship's cargo is part of maritime service, a stevedore can recover against an employer in admiralty for the employer's negligence.¹⁰

Services rendered in improving waterways, or extensions or improvements of the land near waterways, are nonmaritime¹¹ as are underwater services rendered in construction of a tunnel.¹²

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Footnotes

¹ [Olsen v. Birch](#), 133 Cal. 479, 65 P. 1032 (1901).

² [U.S. Cas. Co. v. Taylor](#), 64 F.2d 521 (C.C.A. 4th Cir. 1933); [Zahler v. Department of Labor and Industries](#), 125 Wash.

410, 217 P. 55 (1923).

As to construction contracts not being maritime, see § 58.

3 Wagner v. McDermott, Inc., 899 F. Supp. 1551 (W.D. La. 1994), *aff'd*, 79 F.3d 20 (5th Cir. 1996).

4 Cesaroni v. U.S., 624 F. Supp. 613 (S.D. Ga. 1985), *judgment aff'd*, 780 F.2d 1031 (11th Cir. 1985).

5 Kennedy v. H & M Landing, Inc., 529 F.2d 987 (9th Cir. 1976).

6 Riedel v. Mallory S.S. Co., 196 A.D. 794, 188 N.Y.S. 649 (3d Dep't 1921).

7 Teahan v. Industrial Accident Commission, 210 Cal. 342, 292 P. 120 (1930) (wharfinger).

8 American Stevedores v. Porello, 330 U.S. 446, 67 S. Ct. 847, 91 L. Ed. 1011 (1947); Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 49 S. Ct. 88, 73 L. Ed. 232 (1928); Hamburg-Amerika Linie v. Gulf Puerto Rico Lines, Inc., 579 F.2d 115 (1st Cir. 1978); Orgulf Transport Co. v. Hill's Marine Enterprises, Inc., 188 F. Supp. 2d 1056 (S.D. Ill. 2002).

As to the effect of the Longshore and Harbor Workers' Compensation Act, see Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 99 to 132.

9 Newham v. Chile Exploration Co., 232 N.Y. 37, 133 N.E. 120, 25 A.L.R. 1018 (1921).

10 Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Limited, 369 U.S. 355, 82 S. Ct. 780, 7 L. Ed. 2d 798, 5 Fed. R. Serv. 2d 757 (1962).

11 Kibadeaux v. Standard Dredging Co., 81 F.2d 670 (C.C.A. 5th Cir. 1936); Fuentes v. Gulf Coast Dredging Co., 54 F.2d 69 (C.C.A. 5th Cir. 1931).

12 Sullivan v. Booth & Flinn, 210 A.D. 347, 206 N.Y.S. 360 (2d Dep't 1924).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved

5. Actions Sounding in Tort

a. In General

§ 65. Generally

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West's Key Number Digest

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[Admiralty jurisdiction: maritime nature of tort—modern cases, 80 A.L.R. Fed. 105](#)

Treatises and Practice Aids

As to actions sounding in tort, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [[Westlaw® Search Query](#)]

Trial Strategy

[Proof of Negligence in Repair of Vessel, 138 Am. Jur. Proof of Facts 3d 377](#)

Forms

Forms relating to tort actions: see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Causes of action arising out of maritime torts are within the jurisdiction of admiralty.¹

The term “tort,” with reference to admiralty jurisdiction, includes torts resulting from malfeasance or negligence, as well as those committed by direct force.² Analysis of a maritime tort is guided by the general principles of negligence law, such as whether the tortfeasor owed a duty to the person injured.³

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Footnotes

- ¹ [Pope & Talbot v. Hawn](#), 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143 (1953); [The Linseed King](#), 285 U.S. 502, 52 S. Ct. 450, 76 L. Ed. 903 (1932).
As to what constitutes a maritime tort, see §§ [68](#), [69](#).
As to wrongful death actions, see §§ [106](#) to [114](#).
As to admiralty jurisdiction over cases involving airline accidents, see [Am. Jur. 2d, Aviation § 190](#).
As to whether product liability claims come within admiralty jurisdiction, generally, see [Am. Jur. 2d, Products Liability §§ 1512](#) to [1518](#).
- ² [Canadian Aviator v. U.S.](#), 324 U.S. 215, 65 S. Ct. 639, 89 L. Ed. 901 (1945); [Leathers v. Blessing](#), 105 U.S. 626, 26 L. Ed. 1192, 1881 WL 19804 (1881).
- ³ [Consolidated Aluminum Corp. v. C.F. Bean Corp.](#), 833 F.2d 65 (5th Cir. 1987).

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5. Actions Sounding in Tort

a. In General

§ 66. Exemption from Federal Tort Claims Act

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  18

A.L.R. Library

[Construction and Application of Federal Tort Claims Act—United States Supreme Court Cases](#), 24 A.L.R. Fed. 2d 329

The Federal Tort Claims Act allows the litigation of certain claims against the United States in federal district court.¹In its present form, the Act expressly provides that it does not apply to any claim for which a remedy is provided by the federal statutes pertaining to suits in admiralty against the United States or to suits involving public vessels.²Thus, where a claim for injuries sustained arises in admiralty, it cannot be brought under the Federal Tort Claims Act.³The exemption from the Federal Tort Claims Act also applies to third-party complaints.⁴

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¹ As to jurisdiction under 28 U.S.C.A. § 1346(b), generally, see [Am. Jur. 2d, Federal Tort Claims Act §§ 185 to 196](#).

² 28 U.S.C.A. § 2680(d).
As to the Suits in Admiralty Act, see §§ [96 to 100](#), and as to the Public Vessels Act, see §§ [101 to 103](#).

³ [Anderson v. U.S.](#), 317 F.3d 1235 (11th Cir. 2003).

⁴ [Orion Shipping & Trading Co. v. U. S.](#), 247 F.2d 755 (9th Cir. 1957).

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5. Actions Sounding in Tort

a. In General

§ 67. Who may recover

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  18, 20, 21

Parties who may recover for injuries suffered from maritime torts include stevedores,¹ seamen,² workers repairing vessels,³ slot machine attendants⁴ or patrons⁵ on a riverboat casino, vessel passengers⁶ and invitees,⁷ and vessel owners⁸ and operators.⁹ If the tort which is the basis of a suit in admiralty is maritime in nature,¹⁰ admiralty jurisdiction lies whether the suit is brought by the person directly injured or by someone else who was damaged by it as, for instance, by the injured person's spouse or parent.¹¹

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¹ [Vancouver S.S. Co. v. Rice](#), 288 U.S. 445, 53 S. Ct. 420, 77 L. Ed. 885 (1933); [Nogueira v. New York, N.H. & H.R. Co.](#), 281 U.S. 128, 50 S. Ct. 303, 74 L. Ed. 754 (1930).

As to the right of stevedores and longshore workers to recover for maritime service claims, see [§ 63](#).

As to the rights of stevedores to recover for a maritime tort, which may be limited by statute, such as a state workers' compensation act, see [Am. Jur. 2d, Workers' Compensation §§ 40, 42, 43, 56](#).

² [Miles v. Apex Marine Corp.](#), 498 U.S. 19, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990).

As to the rights of seamen in a negligence action under the Jones Act, see [Am. Jur. 2d, Workers' Compensation § 41](#).

³ [Vasquez v. GMD Shipyard Corp.](#), 582 F.3d 293 (2d Cir. 2009); [John Crane, Inc. v. Jones](#), 274 Va. 581, 650 S.E.2d 851 (2007); [Garlock Sealing Technologies, LLC v. Little](#), 270 Va. 381, 620 S.E.2d 773 (2005).

⁴ [Weaver v. Hollywood Casino-Aurora, Inc.](#), 255 F.3d 379 (7th Cir. 2001).

- ⁵ Tagliere v. Harrah's Illinois Corp., 445 F.3d 1012 (7th Cir. 2006).
- ⁶ Gibbs ex rel. Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 54 Fed. R. Serv. 3d 507 (3d Cir. 2002); In re Mission Bay Jet Sports, LLC, 570 F.3d 1124 (9th Cir. 2009).
- ⁷ Butler v. American Trawler Co., Inc., 887 F.2d 20 (1st Cir. 1989); Tide Water Associated Oil Co. v. Richardson, 169 F.2d 802 (C.C.A. 9th Cir. 1948).
- ⁸ Mala v. Crown Bay Marina, Inc., 58 V.I. 691, 704 F.3d 239 (3d Cir. 2013).
- ⁹ Giorgio v. Alliance Operating Corp., 921 So. 2d 58 (La. 2006).
- ¹⁰ §§ 68, 69.
- ¹¹ New York & Long Branch Steamboat Co. v. Johnson, 195 F. 740 (C.C.A. 3d Cir. 1912).

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II. Jurisdiction of Admiralty Courts

E. Jurisdiction over the Subject Matter Involved


5. Actions Sounding in Tort

b. Maritime Nature of Tort Test

§ 68. Generally; connection test

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A.L.R. Library

[Admiralty jurisdiction: maritime nature of tort—modern cases](#), 80 A.L.R. Fed. 105

Trial Strategy

[Motorboat propeller injury accidents](#), 41 Am. Jur. Trials 161

A party seeking to invoke federal admiralty jurisdiction over a tort claim must satisfy the conditions of both “location”¹ and a “connection with maritime activity.”² The connection test raises two issues: (1) requiring the court to assess the general features of the type of incident involved to determine whether the incident has a potentially disruptive impact on maritime commerce, and (2) to then determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.³ The focus is on the general character of the activity since examining the precise factual antecedents of the incident at issue would veer too close to an evaluation of the merits, which is inappropriate at the jurisdictional stage.⁴

Under the connection test's second prong, the court must ask whether a tortfeasor's activity, commercial or noncommercial, on navigable waters is so closely related to activity traditionally subject to admiralty law that the reasons for applying the special admiralty rules would apply.⁵ Thus, the navigation of boats in navigable waters falls within the substantial relationship, and storing them at a marina at navigable waters is close enough, whereas flying an airplane over water or swimming is too attenuated.⁶

Although federal admiralty tort jurisdiction is limited by the requirement that the wrong must bear a significant relationship to traditional maritime activity, there is no requirement that the maritime activity be limited to navigation⁷ or that it be committed on board a vessel.⁸ The fact that the injury occurred on land is not a bar to recovery so long as the requisite maritime status or relation is present.⁹

The substantial relationship test is satisfied when at least one alleged tortfeasor was engaging in activity substantially related to traditional maritime activity and such activity is claimed to have been the proximate cause of the incident.¹⁰

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Footnotes

- ¹ § 69.
- ² *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ³ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ⁴ *Gruver v. Lesman Fisheries Inc.*, 489 F.3d 978 (9th Cir. 2007).
- ⁵ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ⁶ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
- ⁷ *Sisson v. Ruby*, 497 U.S. 358, 110 S. Ct. 2892, 111 L. Ed. 2d 292 (1990).
- ⁸ *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 42 S. Ct. 157, 66 L. Ed. 321, 25 A.L.R. 1008 (1922).
- ⁹ *Massa v. C. A. Venezuelan Navigacion*, 298 F.2d 239 (2d Cir. 1962); *Interlake S. S. Co. v. Nielsen*, 338 F.2d 879 (6th Cir. 1964).
As to the effect of the Admiralty Jurisdiction Extension Act, see §§ 50 to 52.
- ¹⁰ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).

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II. Jurisdiction of Admiralty Courts

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5. Actions Sounding in Tort

b. Maritime Nature of Tort Test

§ 69. Location test

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Admiralty](#)  17.1, 18

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[Admiralty jurisdiction: maritime nature of tort—modern cases](#), 80 A.L.R. Fed. 105

Law Reviews and Other Periodicals

Cardwell, Donald Lance, [Beware! Defective Appurtenances: A Discussion of the “Substantial Relationship” Requirement for Invoking Admiralty Jurisdiction in the Products Liability Context](#), 36 Tul. Mar. L.J. 237 (Winter 2011)

The situs of a tort for the purpose of determining admiralty jurisdiction is the place where the injury occurs.¹

A court applying the location test to determine the maritime nature of a tort must determine whether the tort occurred on navigable water or if the injury suffered on land was caused by a vessel on navigable water.² It is the Admiralty Jurisdiction Extension Act³ that extends maritime jurisdiction to injury caused by a vessel on navigable waters even where the damage has been done and consummated on land.⁴ Under the locality test, for the purpose of determining admiralty jurisdiction pursuant to the Act, an appurtenance to a vessel is treated as part of the vessel itself.⁵

A maritime tort may be within the ambit of American admiralty jurisdiction though it was committed in the territorial waters of a foreign power.⁶

CUMULATIVE SUPPLEMENT

Cases:

A cause of action sounding in tort is not cognizable under admiralty jurisdiction unless the alleged wrong occurs on navigable waters. [Garrett](#), 981 F.3d 739 (9th Cir. 2020).

[END OF SUPPLEMENT]

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Footnotes

¹ [Tobar v. U.S.](#), 639 F.3d 1191 (9th Cir. 2011).

² [Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.](#), 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995).
As to what constitutes navigable waters within admiralty jurisdiction, see §§ 48, 49.

³ [46 U.S.C.A. § 30101](#).

⁴ [Sullivan v. Ajax Navigation Corp.](#), 881 F. Supp. 906 (S.D. N.Y. 1995).
As to the Admiralty Jurisdiction Extension Act, see §§ 50 to 52.

⁵ [Scott v. Trump Indiana, Inc.](#), 337 F.3d 939 (7th Cir. 2003).

⁶ [Panama R. Co. v. Napier Shipping Co.](#), 166 U.S. 280, 17 S. Ct. 572, 41 L. Ed. 1004 (1897); [The Eagle](#), 75 U.S. 15, 19 L. Ed. 365, 1868 WL 11110 (1868).

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§ 70. What constitutes maritime tort, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  17.1 to 21

A.L.R. Library

[Liability for injuries to, or death of, water-skiers, 34 A.L.R.5th 77](#)

[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

Trial Strategy

[Proof of Negligence in Repair of Vessel, 138 Am. Jur. Proof of Facts 3d 377 §§ 2 to 7](#)

[Negligent operation of pleasure boat, 43 Am. Jur. Proof of Facts 2d 395 § 20](#)

[Liability for negligent operation of ski boat, 36 Am. Jur. Proof of Facts 2d 525 § 2](#)

[Motorboat propeller injury accidents, 41 Am. Jur. Trials 161](#)

[Motorboat Accident Litigation, 7 Am. Jur. Trials 1](#)

Forms

Forms relating to actions by seamen, generally, see Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

Many types of torts are considered maritime in nature and thus within admiralty jurisdiction, including:

- negligence cases¹
- claims for personal injuries sustained on board a ship in navigable water² or aboard a vessel moored to a wharf in navigable water³
- injuries suffered by a worker⁴
- breach of duty to furnish a seaworthy ship⁵
- assault and battery aboard a ship⁶
- false detainer or arrest, even by the United States Coast Guard⁷

Other torts, however, may not satisfy the maritime tort test⁸ and therefore, admiralty jurisdiction may not be present where:

- an aircraft crashes in international waters⁹
- harbor police are negligent, where the conduct and activities of the harbor police are insufficiently related to traditional maritime activity¹⁰
- the activity surrounding recreational scuba diving did not affect maritime commerce, and the activities were not connected with traditional maritime activity¹¹
- an insurance broker breaches a duty to the insured by placing a procured boat insurance policy with a financially unsound insurer¹²
- the action is one for defamation¹³
- the cause of action is one for malpractice against doctors treating an injured worker on land, after the worker was injured during a fall from a rig at sea¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Recreational boat owner's actions in incident involving injury to passenger who dived from boat into shallow bay where boat was anchored were substantially related to traditional maritime activity, as required for federal admiralty jurisdiction to extend to boat owner's petition to limit his tort liability for the incident; owner was engaged in traditional maritime activity, whether his actions were considered general transport and care of passengers on a vessel on navigable waters, or more specific anchoring of a vessel without warning of attendant dangers. 28 U.S.C.A. § 1333(1); 46 U.S.C.A. § 30505(a). *In re Petition of Germain*, 824 F.3d 258 (2d Cir. 2016).

District court had admiralty jurisdiction over personal injury claim brought against cruise ship by estate of passenger, who was injured when, as result of inclement weather, he was thrown around and hit the back of his head; passenger's injury occurred aboard a vessel on either the high seas or the territorial waters of the Dominican Republic, both of which qualified as navigable waters, and injury aboard a vessel engaged in the commercial transportation of passengers bore a significant relation to traditional maritime activities and had an effect on maritime commerce. *Santos v. America Cruise Ferries, Inc.*, 100 F. Supp. 3d 96 (D.P.R. 2015).

[END OF SUPPLEMENT]

- ¹ [Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.](#), 513 U.S. 527, 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995); [Taghadomi v. U.S.](#), 401 F.3d 1080 (9th Cir. 2005).
A personal watercraft accident, in which passengers were thrown off at high speed as the result of the operator's negligence, had a sufficient connection to maritime commerce, even though the accident did not actually disrupt commercial activity, where the type of incident at issue had the potential to disrupt commercial activity by ensnaring maritime traffic in the lanes affected. [In re Mission Bay Jet Sports, LLC](#), 570 F.3d 1124 (9th Cir. 2009).
As to whether product liability claims come within admiralty jurisdiction, generally, see [Am. Jur. 2d, Products Liability](#) §§ 1512 to 1518.
- ² [The Linseed King](#), 285 U.S. 502, 52 S. Ct. 450, 76 L. Ed. 903 (1932); [Chelentis v. Luckenbach S.S. Co.](#), 247 U.S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918); [Ciolino v. Sciortino Corp.](#), 721 F. Supp. 1491 (D. Mass. 1989).
The transport and care of paying passengers is a quintessential maritime activity affecting commerce; thus, a scuba diver's claim against the crew of a vessel that transported him to a dive site is within admiralty jurisdiction. [Sinclair v. Soniform, Inc.](#), 935 F.2d 599 (3d Cir. 1991).
- ³ [Atlantic Transport Co. of W.Va. v. State of Md.](#), 234 U.S. 63, 34 S. Ct. 736, 58 L. Ed. 1213 (1914); [Tagliere v. Harrah's Illinois Corp.](#), 445 F.3d 1012 (7th Cir. 2006).
- ⁴ [Shea v. Rev-Lyn Contracting Co., Inc.](#), 868 F.2d 515 (1st Cir. 1989); [Scarborough v. Clemco Industries](#), 391 F.3d 660 (5th Cir. 2004).
- ⁵ [Seas Shipping Co. v. Sieracki](#), 328 U.S. 85, 66 S. Ct. 872, 90 L. Ed. 1099 (1946); [Strika v. Netherlands Ministry of Traffic](#), 185 F.2d 555 (2d Cir. 1950).
As to a general discussion of the doctrine of seaworthiness, see [Am. Jur. 2d, Shipping](#) §§ 23 to 35.
- ⁶ [The Whisper](#), 268 F. 464 (C.C.A. 6th Cir. 1920); [Gruver v. Lesman Fisheries Inc.](#), 489 F.3d 978 (9th Cir. 2007).
- ⁷ [Harrington v. U.S.](#), 748 F. Supp. 919 (D.P.R. 1990).
- ⁸ §§ 68, 69.
- ⁹ [U.S. Aviation Underwriters, Inc. v. Pilatus Business Aircraft, Ltd.](#), 582 F.3d 1131 (10th Cir. 2009).
As to admiralty jurisdiction over cases involving airline accidents, see [Am. Jur. 2d, Aviation](#) § 190.
- ¹⁰ [Hasty v. Trans Atlas Boats Inc.](#), 389 F.3d 510 (5th Cir. 2004).
- ¹¹ [Delgado v. Reef Resort Ltd.](#), 364 F.3d 642, 58 Fed. R. Serv. 3d 327 (5th Cir. 2004).
- ¹² [Broughton v. Florida Intern. Underwriters, Inc.](#), 139 F.3d 861 (11th Cir. 1998) (although there was some connection between the alleged tort and traditional maritime activity, the alleged tort did not occur on navigable water, nor was an injury on land caused by a vessel on navigable water).
- ¹³ [LaMontagne v. Craig](#), 817 F.2d 556 (9th Cir. 1987) (receipt of the allegedly defamatory statement, its publication, and the resulting harm to the plaintiff in not being promoted to master of a vessel all occurred on dry land).
- ¹⁴ [Miller v. Griffin-Alexander Drilling Co.](#), 873 F.2d 809 (5th Cir. 1989).

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§ 71. Collision cases

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  18 to 21

A.L.R. Library

[Liability in admiralty for collision between vessel and drawbridge structure, 134 A.L.R. Fed. 537](#)

Trial Strategy

[Ship collisions: Technical and legal aspects; investigation and preparation for suit, 63 Am. Jur. Trials 347 § 196](#)
[Preparing a ship collision case for trial, 17 Am. Jur. Trials 501 § 60](#)

Forms

Forms relating to collision, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Causes of action that arise from collisions between vessels or watercraft on navigable waters are generally within the jurisdiction of admiralty¹as are those arising from collisions on navigable waters between navigating vessels and nonnavigating structures.²Additionally, admiralty jurisdiction is invoked by an activity involving the navigation of a vessel into, or over, a swimmer.³

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Footnotes

¹ Yamaha Motor Corp., U.S.A. v. Calhoun, 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996); Erie R. Co. v. Erie & Western Transp. Co., 204 U.S. 220, 27 S. Ct. 246, 51 L. Ed. 450 (1907); Workman v. City of New York, 179 U.S. 552, 21 S. Ct. 212, 45 L. Ed. 314 (1900); Calhoun v. Yamaha Motor Corp., U.S.A., 216 F.3d 338 (3d Cir. 2000); Voge v. Schnaidt, 2001 ND 174, 635 N.W.2d 161 (N.D. 2001).

² Panama R. Co. v. Napier Shipping Co., 166 U.S. 280, 17 S. Ct. 572, 41 L. Ed. 1004 (1897); Southern Pacific Transp. Co. v. Tug Capt. Vick, 443 F. Supp. 722 (E.D. La. 1977); Choat v. Kawasaki Motors Corp., 675 So. 2d 879 (Ala. 1996).

³ Choat v. Kawasaki Motors Corp., 675 So. 2d 879 (Ala. 1996).

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§ 72. Pollution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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A claim of pollution damage is cognizable in admiralty to the extent that the alleged injury is to maritime interests rather than to aesthetic or ecological concerns.¹

The section of the Oil Pollution Act² providing that the statute does not affect admiralty and maritime law “except as otherwise provided” only preserves admiralty claims which are not addressed in the Oil Pollution Act, such as a claim for collision damages.³

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Footnotes

¹ [Kohlasch v. New York State Thruway Authority](#), 460 F. Supp. 956 (S.D. N.Y. 1978).

² [33 U.S.C.A. § 2751](#).

³ [National Shipping Co. of Saudi Arabia \(NSCSA\) v. Moran Mid-Atlantic Corp.](#), 924 F. Supp. 1436 (E.D. Va. 1996), judgment aff'd, 122 F.3d 1062 (4th Cir. 1997).

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6. Claims Arising Under Other Theories

§ 73. Petitory and possessory suits

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West's Key Number Digest

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Forms

Forms relating to petitory and possessory suits, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

Generally, admiralty jurisdiction extends to petitory as well as possessory suits in maritime property cases.¹

Definition:

A “petitory” suit, in admiralty, is a suit brought to assert legal title independent of questions concerning possession while a “possessory” action is brought to recover possession of a vessel of which the plaintiff has been wrongfully deprived.²

A suit to try title to or possession of a ship wrongfully taken is within jurisdiction of admiralty courts regardless of whether the claim to the ship is based on the breach of a maritime contract or the commission of a maritime tort.³ Such actions are in rem and equivalent to the common-law remedies of replevin and detinue.⁴ A court has in rem jurisdiction over a petitory

action only where the plaintiff already holds legal title to a vessel and not a mere equitable interest.⁵

A court may exercise constructive possession over a shipwreck when part of the shipwreck is presented to a United States district court.⁶

Admiralty does not have jurisdiction over a purported possessory action that does not arise out of traditional maritime activity.⁷

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Footnotes

- ¹ Ward v. Peck, 59 U.S. 267, 18 How. 267, 15 L. Ed. 383, 1855 WL 8251 (1855); The Sarah Ann, 38 U.S. 387, 10 L. Ed. 213, 1839 WL 4303 (1839); Mullane v. Chambers, 333 F.3d 322, 56 Fed. R. Serv. 3d 846 (1st Cir. 2003); Matsuda v. Wada, 128 F. Supp. 2d 659 (D. Haw. 2000).
As to the process of arrest in possessory, petitory, or partition actions, see §§ 146, 147.
As to a discussion of title, ownership, transfer, and encumbrance of vessels, see Am. Jur. 2d, Shipping §§ 127 to 172.
- ² Mullane v. Chambers, 333 F.3d 322, 56 Fed. R. Serv. 3d 846 (1st Cir. 2003); Hunt v. A Cargo of Petroleum Products Laden on Steam Tanker Hilda, 378 F. Supp. 701 (E.D. Pa. 1974), aff'd, 515 F.2d 506 (3d Cir. 1975) and aff'd, 515 F.2d 506 (3d Cir. 1975); Northern Ins. Co. of New York v. 1996 Searay Model 370DA Yacht, 453 F. Supp. 2d 905 (D.S.C. 2006), judgment amended, (May 12, 2006).
- ³ Hunt v. A Cargo of Petroleum Products Laden on Steam Tanker Hilda, 378 F. Supp. 701 (E.D. Pa. 1974), aff'd, 515 F.2d 506 (3d Cir. 1975) and aff'd, 515 F.2d 506 (3d Cir. 1975).
- ⁴ Dluhos v. Trueman, 75 F. Supp. 2d 41 (N.D. N.Y. 1999); Hunt v. A Cargo of Petroleum Products Laden on Steam Tanker Hilda, 378 F. Supp. 701 (E.D. Pa. 1974), aff'd, 515 F.2d 506 (3d Cir. 1975) and aff'd, 515 F.2d 506 (3d Cir. 1975).
- ⁵ Gulf Coast Shell and Aggregate LP v. Newlin, 623 F.3d 235 (5th Cir. 2010); Trueman v. Historic Steamtug NEW YORK, 120 F. Supp. 2d 228 (N.D. N.Y. 2000).
- ⁶ Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel, 657 F.3d 1159 (11th Cir. 2011), cert. denied, 132 S. Ct. 2379, 182 L. Ed. 2d 1051 (2012) and cert. denied, 132 S. Ct. 2380 (2012) and cert. denied, 132 S. Ct. 2380, 182 L. Ed. 2d 1051 (2012) (while the wreck of a Spanish frigate discovered in international waters was not, itself, within the United States, that alone did not defeat the district court's ability to obtain jurisdiction over it).
- ⁷ Felix v. Arizona Dept. of Health Services, Goods, Vital Records Section, 606 F. Supp. 634 (D. Ariz. 1985).

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§ 74. Wharfage and dockage

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Forms

Forms relating to wharfage or dockage, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Wharfage claims are generally within admiralty jurisdiction¹ as are claims for dockage.² Jurisdiction may depend, however, on whether by the use of the wharf the ship has been taken out of navigation. It is not taken out of navigation, and admiralty jurisdiction extends to the wharfage claim where the wharf is used only for restoration of the ship after one voyage and preparatory to another.³

A claim will not be within maritime jurisdiction where the dockage fees allegedly owed are from the docking of a structure that is not a “vessel.”⁴

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Footnotes

¹ [Am. Jur. 2d, Wharves § 30.](#)

² [Ex parte Easton](#), 95 U.S. 68, 24 L. Ed. 373, 1877 WL 18549 (1877); [South Carolina State Ports Authority v. Silver Anchor, S.A., \(Panama\)](#), 23 F.3d 842 (4th Cir. 1994); [Heck-Dance v. Inversiones Isleta Marina, Inc.](#), 381 F. Supp. 2d

50 (D.P.R. 2005).

³ [Yacht Charterers v. Diesel Yacht Yankee Clipper](#), 121 F. Supp. 118 (D. Conn. 1954).
As to what constitutes “navigable waters,” see §§ [48](#), [49](#).
As to what constitutes a vessel in navigation, see §§ [34](#) to [39](#).

⁴ [Lozman v. City of Riviera Beach, Fla.](#), 133 S. Ct. 735, 184 L. Ed. 2d 604 (2013).
As to what constitutes a “vessel,” see § [35](#).

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§ 75. Litigation over unseaworthiness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1(1), 1.20(2), 1.20(5)

Litigation related to the warranty of seaworthiness¹ is within admiralty jurisdiction.² Suits for unseaworthiness are accordingly within the admiralty jurisdiction of the district court.³ Also, admiralty jurisdiction of a libel for loss occasioned by unseaworthiness of a vessel is not destroyed by a showing of nonmaritime contracts out of which the shipment arose.⁴

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Footnotes

¹ As to the doctrine of seaworthiness, see [Am. Jur. 2d, Shipping §§ 23 to 35](#).

² [Mahnich v. Southern S. S. Co.](#), 321 U.S. 96, 64 S. Ct. 455, 88 L. Ed. 561 (1944); [Morrow v. MarineMax, Inc.](#), 731 F. Supp. 2d 390 (D.N.J. 2010); [Underwriters at Lloyd's v. LaBarca](#), 106 F. Supp. 2d 205 (D.P.R. 2000), judgment aff'd, 260 F.3d 3 (1st Cir. 2001).

³ [Green v. Vermilion Corp.](#), 144 F.3d 332 (5th Cir. 1998); [Muhs v. River Rats, Inc.](#), 586 F. Supp. 2d 1364 (S.D. Ga. 2008); [Boudreau v. S/V Shere Khan C](#), 27 F. Supp. 2d 72 (D. Me. 1998); [Parker v. Rowan Companies, Inc.](#), 628 So. 2d 1108 (La. 1991), on reh'g, 599 So. 2d 296 (La. 1992).

⁴ [Armour & Co. v. Ft. Morgan S.S. Co.](#), 270 U.S. 253, 46 S. Ct. 212, 70 L. Ed. 571 (1926).

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§ 76. Maritime crimes

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West's Key Number Digest

West's Key Number Digest, [Criminal Law](#)  97(3)

Admiralty, from antiquity, has exercised extensive criminal jurisdiction, and under the U.S. Constitution's grant of power to federal courts to hear all cases of admiralty and maritime jurisdiction,¹ admiralty courts may be authorized by Congress to exercise criminal jurisdiction.² The jurisdiction thus authorized has been held to extend to crimes committed on an American ship in the territorial waters of a foreign sovereign³ and does not preclude a state's exercise of concurrent jurisdiction with the federal government over a crime within the state's territorial waters.⁴

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Footnotes

¹ U.S. Const. Art. III, § 2, cl. 1.

² *United States v. Flores*, 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086 (1933).
As to special maritime and territorial jurisdiction under 18 U.S.C.A. § 7, see § 36.

³ *United States v. Flores*, 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086 (1933).

⁴ *State v. Stepansky*, 761 So. 2d 1027 (Fla. 2000).

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§ 77. Forfeitures and penalties

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  23

Forms

Forms relating to forfeiture, generally, see Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

A federal district court enjoys broad equitable authority over the administration of maritime seizures.¹ Under provisions for the recovery of penalties or forfeitures for a violation of federal law,² it is the general rule that admiralty jurisdiction is dependent upon the seizure being made on navigable water and that jurisdiction does not extend to seizures on land.³ The jurisdiction of the admiralty court depends on the goods to be seized being on navigable waters at the time of the filing of the libel, not on their location at the time of actual seizure.⁴

In forfeiture and penalty suits in admiralty, the vessel is primarily regarded as the offender, and hence the proceedings are instituted against it, not against the owners, though in many cases there is a personal penalty against the owners as well; as a general rule, however, the two proceedings are independent of each other.⁵

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Footnotes

¹ [Beauregard, Inc. v. Sword Services L.L.C.](#), 107 F.3d 351, 37 Fed. R. Serv. 3d 123 (5th Cir. 1997).

² Am. Jur. 2d, Shipping §§ 110 to 126.

³ U.S. v. Rizzo, 297 U.S. 530, 56 S. Ct. 580, 80 L. Ed. 844 (1936); Moore v. Purse Seine Net, 18 Cal. 2d 835, 118 P.2d 1 (1941), judgment aff'd, 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943).

⁴ The Lucky Lindy, 76 F.2d 561 (C.C.A. 5th Cir. 1935).

⁵ The John G. Stevens, 170 U.S. 113, 18 S. Ct. 544, 42 L. Ed. 969 (1898).

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6. Claims Arising Under Other Theories

§ 78. Payment of customs duties

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The payment of customs duties on the importation of foreign goods brought into the country by overseas transport is within federal admiralty jurisdiction.¹

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Footnotes

¹ [Orient Atlantic Parco, Inc. v. Maersk Lines](#), 740 F. Supp. 1002 (S.D. N.Y. 1990).

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6. Claims Arising Under Other Theories

§ 79. Claims relating to salvage of vessel

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West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  6

West's Key Number Digest, [Salvage](#)  45

Treatises and Practice Aids

As to salvage proceedings, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [\[Westlaw®: Search Query\]](#)

Forms

Forms relating to salvage, generally, see Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

As a rule, claims arising out of salvage operations are within the admiralty jurisdiction of federal courts.¹ However, federal admiralty jurisdiction does not extend, in itself, to salvage claims.² In order to assert federal admiralty jurisdiction over a salvage claim, the object that is subject to salvage must be located in navigable waters.³

To exercise in rem jurisdiction over a ship or its cargo, the ship or cargo must be within the district in which the in rem complaint is filed.⁴ The in rem action depends on the court's having jurisdiction over the res, the property which is named as the defendant, and only if the court has exclusive custody and control over the property does it have jurisdiction over the

property so as to be able to adjudicate rights in it that are binding against the world.⁵In an in rem admiralty action, the arrest of a shipwreck is the procedure by which a salvor establishes jurisdiction in federal court.⁶To obtain possession over the res, a district court sitting in admiralty may issue a warrant of arrest for a physical part of a shipwreck, described as an artifact, and, based on this arrest, exercise constructive jurisdiction over the entire shipwreck.⁷Although a federal court may require a salvor to reveal the precise location of a vessel after a state has intervened, the court must first ensure that the State cannot divest the federal court of jurisdiction.⁸

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Footnotes

- ¹ [Adams v. Unione Mediterranea Di Sicurtà](#), 220 F.3d 659 (5th Cir. 2000); [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 709 F.3d 1055 (11th Cir. 2013).
- ² [Historic Aircraft Recovery Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft](#), 294 F. Supp. 2d 132 (D. Me. 2003).
As to salvage rights, generally, see [Am. Jur. 2d, Salvage §§ 21 to 32](#).
- ³ [Historic Aircraft Recovery Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft](#), 294 F. Supp. 2d 132 (D. Me. 2003); [Sullivan v. General Helicopters, Int'l](#), 564 F. Supp. 2d 496 (D. Md. 2008).
- ⁴ [R.M.S. Titanic, Inc. v. Haver](#), 171 F.3d 943 (4th Cir. 1999).
- ⁵ [R.M.S. Titanic, Inc. v. Haver](#), 171 F.3d 943 (4th Cir. 1999); [Great Lakes Exploration Group, LLC v. Unidentified Wrecked and \(For Salvage-Right Purposes\), Abandoned Sailing Vessel](#), 522 F.3d 682 (6th Cir. 2008).
The district court lacked in rem jurisdiction over artifacts recovered from a wrecked vessel prior to the commencement of the in rem action, which were the subject of an award of title by an administrative proceeding in France, nor any other jurisdictional basis upon which to declare the right to title in the artifacts where the artifacts were in France at the start of the in rem proceeding rather than in the court's jurisdiction, were not named as the in rem defendant, and were not voluntarily subjected to the court's jurisdiction. [R.M.S. Titanic, Incorporated v. The Wrecked and Abandoned Vessel](#), 435 F.3d 521 (4th Cir. 2006).
- ⁶ [Northeast Research, LLC v. One Shipwrecked Vessel](#), 729 F.3d 197 (2d Cir. 2013).
As to in rem arrest, generally, see § 143.
- ⁷ [Great Lakes Exploration Group, LLC v. Unidentified Wrecked and \(For Salvage-Right Purposes\), Abandoned Sailing Vessel](#), 522 F.3d 682 (6th Cir. 2008).
- ⁸ [Great Lakes Exploration Group, LLC v. Unidentified Wrecked and \(For Salvage-Right Purposes\), Abandoned Sailing Vessel](#), 522 F.3d 682 (6th Cir. 2008).

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Treatises and Practice Aids

As to saving to suitors clause and jurisdiction, generally, see Federal Procedure, L. Ed., Maritime Law and Procedure [[Westlaw®: Search Query](#)]

Forms

Forms relating to limitation of liability, generally, see Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

The jurisdiction of the federal district courts over causes of admiralty and maritime jurisdiction is original and exclusive of the courts of the states, saving to suitors in “all cases all other remedies to which they are otherwise entitled.”¹

The saving to suitors clause generally means that a suitor asserting an in personam admiralty claim may elect to sue in a common-law state court through an ordinary civil action.² It is not a remedy in the common-law courts that is saved but a common-law remedy.³ The saving to suitors clause thus reserves common-law remedies to a plaintiff in all cases where the common law is competent to give it.⁴

Practice Tip:

The saving to suitors clause embodies a presumption in favor of jury trials and common-law remedies in the forum of the claimant's choice.⁵ Thus, the effect of the saving to suitors clause is to give an in personam plaintiff the choice of proceeding in an ordinary civil action rather than bringing a libel in admiralty.⁶ However, the clause does not guarantee a nonfederal forum for admiralty or maritime causes of action where a forum-selection clause in a contract designates a federal court as the forum.⁷

The common-law remedy that is saved to suitors is not restricted to the forms of proceedings as they formerly existed.⁸ It applies to all new rights given by statutes which readily admit of assertion and enforcement in actions according to the course of the common law.⁹ Aside from its lack of authority to provide a remedy in rem,¹⁰ a state, having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents as it sees fit, so long as it does not attempt to make changes in the substantive maritime law.¹¹

Observation:

Under the Exoneration and Limitation of Liability Act,¹² federal district courts have exclusive jurisdiction in proceedings seeking the limitation of a shipowner's liability;¹³ however, where only one claim is being asserted in a state court action, the claimant is entitled under the saving to suitors clause to prosecute that claim in a state court action provided the admiralty jurisdiction to adjudicate the right to limit liability is reserved and protected.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Tension exists between the saving to suitors clause and the Limitation of Liability Act because the clause gives suitors the right to a choice of remedies while the Act gives vessel owners the right to seek limited liability in federal court. [28 U.S.C.A. § 1333\(1\)](#); [46 U.S.C.A. § 50501 et seq.](#) [Odfjell Chemical Tankers AS v. Herrera](#), 471 F. Supp. 3d 790 (S.D. Tex. 2020).

[END OF SUPPLEMENT]

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Footnotes

¹ [28 U.S.C.A. § 1333\(1\)](#).
As to the nature of admiralty jurisdiction as separate, exclusive, and limited, see §§ [16](#) to [18](#).

² [Nunez v. American Seafoods](#), 52 P.3d 720 (Alaska 2002); [Endicott v. Icicle Seafoods, Inc.](#), 167 Wash. 2d 873, 224 P.3d 761 (2010).
As to which law, federal or state, governs the action, see §§ [95](#), [81](#).

- ³ Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918); The Moses Taylor, 71 U.S. 411, 18 L. Ed. 397, 1866 WL 9470 (1866).
- ⁴ Reliance Nat. Ins. Co. (Europe) Ltd. v. Hanover, 222 F. Supp. 2d 110 (D. Mass. 2002).
- ⁵ Offshore of the Palm Beaches, Inc. v. Lynch, 741 F.3d 1251 (11th Cir. 2014).
- ⁶ In re Lockheed Martin Corp., 503 F.3d 351, 68 Fed. R. Serv. 3d 1598 (4th Cir. 2007).
- ⁷ Oltman v. Holland America Line USA, Inc., 163 Wash. 2d 236, 178 P.3d 981 (2008).
As to the effect of a forum-selection clause, see § 24.
- ⁸ Chase v. American S.S. Co., 9 R.I. 419, 1870 WL 2486 (1870).
- ⁹ Panama R. Co. v. Vasquez, 271 U.S. 557, 46 S. Ct. 596, 70 L. Ed. 1085 (1926); Knapp, Stout & Co. Company v. McCaffrey, 177 U.S. 638, 20 S. Ct. 824, 44 L. Ed. 921 (1900); Moore v. Purse Seine Net, 18 Cal. 2d 835, 118 P.2d 1 (1941), judgment *aff'd*, 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943).
- ¹⁰ § 83.
- ¹¹ Madrugá v. Superior Court of State of Cal. in and for San Diego County, 346 U.S. 556, 74 S. Ct. 298, 98 L. Ed. 290 (1954); Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924); Giorgio v. Alliance Operating Corp., 921 So. 2d 58 (La. 2006); Oltman v. Holland America Line USA, Inc., 163 Wash. 2d 236, 178 P.3d 981 (2008).
- ¹² 46 U.S.C.A. §§ 30501 to 30512.
- ¹³ 46 U.S.C.A. § 30511.
- ¹⁴ Anderson v. Nadon, 360 F.2d 53 (9th Cir. 1966).

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Because of the saving to suitors clause,¹ a federal admiralty court and a state court may have concurrent jurisdiction.² However, federal courts do not have removal jurisdiction over admiralty or maritime cases which are brought in state court; instead, such lawsuits are exempt from removal by the saving to suitors clause and therefore may only be removed when original jurisdiction is based on another jurisdictional grant,³ such as diversity of citizenship.⁴ As otherwise stated, under the saving to suitors clause, any maritime claim can be sued on in (1) federal admiralty jurisdiction; (2) federal diversity jurisdiction; or (3) state court.⁵

CUMULATIVE SUPPLEMENT

Cases:

The saving-to-suitors clause in statute governing admiralty jurisdiction did not nullify admiralty jurisdiction over cruise-ship passenger's negligence action, seeking to recover for injury she sustained when she tripped on a dip in the carpeting on ship; clause would have allowed passenger to choose to file her claim exclusively in state court, but she did not do that, and instead, she voluntarily filed in federal court and alleged sufficient facts to satisfy admiralty jurisdiction, and cruise-ship operator agreed to a jury trial. [28 U.S.C.A. § 1333](#). [DeRoy v. Carnival Corporation](#), 963 F.3d 1302 (11th Cir. 2020).

Admiralty jurisdiction, if it existed, did not provide independent basis for removal under general removal statute, and, thus, District Court lacked subject-matter jurisdiction over action by surviving passenger of single motor vehicle accident and estate of deceased passenger against driver of motor vehicle and owner of ship, on which driver and passengers had attended party cruise prior to motor vehicle accident, alleging violations of New York alcoholic beverage control statutes, since saving to suitors clause of admiralty jurisdiction statute guaranteed a plaintiff's right to a state forum, not just a right to pursue nonmaritime remedies, barring removal of admiralty actions under general removal statute absent separate basis for jurisdiction. [28 U.S.C.A. §§ 1333\(1\), 1441](#); [N.Y. Alcoholic Beverage Control Law §§ 65, 117-a](#). [Forde v. Hornblower New](#)

York, LLC, 243 F. Supp. 3d 461 (S.D. N.Y. 2017).

Federal jurisdiction over boat towing and marine salvage company's defamation claim against competitors was sufficiently doubtful as to warrant remand, in company's action filed in state court under the saving-to-suitors clause; while competitors argued that statute governing removal abrogated the traditional rule prohibiting removal of actions under the saving-to-suitors clause, the text of removal statute did not support their argument, permitting competitors to remove the action to federal court would have made considerable inroads into the state courts' traditionally exercised concurrent jurisdiction in admiralty matters, and there was no basis to conclude that, when Congress amended the removal statute, it intended to effect a jurisdictional change in maritime law. 28 U.S.C.A. §§ 1333(1), 1441(a). *Atlantic Coast Marine Group, Inc. v. Willis*, 210 F. Supp. 3d 807 (E.D. N.C. 2016).

[END OF SUPPLEMENT]

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¹ § 80.

² *Panama R. Co. v. Vasquez*, 271 U.S. 557, 46 S. Ct. 596, 70 L. Ed. 1085 (1926); *Moore v. Purse Seine Net*, 18 Cal. 2d 835, 118 P.2d 1 (1941), judgment *aff'd*, 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943); *Carnival Corp. v. Carlisle*, 953 So. 2d 461 (Fla. 2007); *Giorgio v. Alliance Operating Corp.*, 921 So. 2d 58 (La. 2006).

³ *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208 (5th Cir. 2013); *In re Chimenti*, 79 F.3d 534, 1996 FED App. 0107P (6th Cir. 1996).

⁴ *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208 (5th Cir. 2013); *Oltman v. Holland America Line USA, Inc.*, 163 Wash. 2d 236, 178 P.3d 981 (2008).

⁵ *In re Complaint of Holly Marine Towing, Inc.*, 270 F.3d 1086 (7th Cir. 2001); *St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181, 72 Fed. R. Serv. 3d 1260 (11th Cir. 2009).

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§ 82. Proceedings in personam as within saving clause

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State remedies in personam are generally within the scope of the saving to suitors¹ clause.² An example of a claim within the saving to suitors clause is an action in personam to recover damages for a tort, which is the most familiar type of exercise of the jurisdiction of state courts under the saving clause.³ Thus, inasmuch as an action for damages in shipment is a proceeding in personam, not in rem, it falls within the concurrent jurisdiction provided for in the saving to suitors clause.⁴ Also, within the saving to suitors clause are:

- actions for wages, including all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved.⁵
- actions by an injured seaman under the Jones Act.⁶
- a retaliatory discharge claim under state law.⁷
- maritime wrongful death actions.⁸

Also, to the extent that a particular suit in personam is within the clause, an attachment in aid of that remedy is also within it.⁹

In contrast, an action to collect a penalty by a libel in personam does not lie in admiralty and cannot be brought pursuant to the saving to suitors clause.¹⁰

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¹ 46 U.S.C.A. § 1333(1).

² *Madruza v. Superior Court of State of Cal. in and for San Diego County*, 346 U.S. 556, 74 S. Ct. 298, 98 L. Ed. 290 (1954); *Langnes v. Green*, 282 U.S. 531, 51 S. Ct. 243, 75 L. Ed. 520 (1931); *Diesel "Repower," Inc. v. Islander Investments Ltd.*, 271 F.3d 1318 (11th Cir. 2001); *Crowley American Transport, Inc. v. Bryan*, 143 F. Supp. 2d 530 (D.V.I. 2001).

³ *Panama R. Co. v. Vasquez*, 271 U.S. 557, 46 S. Ct. 596, 70 L. Ed. 1085 (1926); *Intagliata v. Shipowners & Merchants*

Tow Boat Co. Limited, 26 Cal. 2d 365, 159 P.2d 1 (1945).

4 Crowley American Transport, Inc. v. Bryan, 143 F. Supp. 2d 530 (D.V.I. 2001).

5 Paul v. All Alaskan Seafoods, Inc., 106 Wash. App. 406, 24 P.3d 447 (Div. 1 2001).

As to the federal courts' jurisdiction over wage claims, see § 63.

6 Duzon v. Stallworth, 866 So. 2d 837 (La. Ct. App. 1st Cir. 2002), writ denied, 842 So. 2d 1101 (La. 2003) and writ denied, 842 So. 2d 1110 (La. 2003); In re GlobalSanteFe Corp., 275 S.W.3d 477 (Tex. 2008); Lundborg v. Keystone Shipping Co., 138 Wash. 2d 658, 981 P.2d 854 (1999).

7 Robinson v. Alter Barge Line, Inc., 513 F.3d 668 (7th Cir. 2008).

8 In Matter of Complaint of Vulcan Materials Co., 674 F. Supp. 2d 756 (E.D. Va. 2009), aff'd, 645 F.3d 249 (4th Cir. 2011); Wheeler v. Bonnin, 47 Or. App. 645, 615 P.2d 355 (1980).

As to admiralty jurisdiction over wrongful death actions, generally, see §§ 106 to 114.

9 Rounds v. Cloverport Foundry & Mach. Co., 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1915); Knapp, Stout & Co. Company v. McCaffrey, 177 U.S. 638, 20 S. Ct. 824, 44 L. Ed. 921 (1900).

10 U.S. v. White's Ferry Inc., Ferryboat General Jubal Early, 382 F. Supp. 162 (D. Md. 1974).

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§ 83. Proceedings in rem as not within saving clause

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The saving to suitors clause does not reach actions in rem, and thus, state courts do not have jurisdiction over in rem proceedings,¹ leaving the exclusive jurisdiction of such actions to the federal courts under the admiralty jurisdiction statute.² This is because the common law, at the time of the adoption of the U.S. Constitution, did not afford the remedy of suits in rem between private persons, and therefore, the saving to suitors clause did not withdraw from the exclusive jurisdiction of admiralty that class of cases in which private suitors seek to enforce their claims by the seizure of vessels in proceedings in rem.³ However, admiralty's jurisdiction is "exclusive" only as to those maritime causes of action that are begun and carried on as proceedings in rem—that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a right and that is the kind of proceeding in rem that the state courts cannot entertain,⁴ and such a proceeding is not within the saving to suitors clause.⁵ However, and although this rule is usually stated without qualification, there is a notable exception in the case of suits involving forfeitures.⁶

According to one court, a marine salvage claim, being unique to admiralty law and of a character that was wholly unknown to the common law, cannot be characterized as a common-law remedy and thus is not amenable to hearing in state courts.⁷

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¹ [Lewis v. Lewis & Clark Marine, Inc.](#), 531 U.S. 438, 121 S. Ct. 993, 148 L. Ed. 2d 931 (2001).

² [Auerbach v. Tow Boat U.S.](#), 303 F. Supp. 2d 538 (D.N.J. 2004); [Stainless Steel & Metal Mfg. Corp. v. Sacal V.I., Inc.](#), 452 F. Supp. 1073 (D.P.R. 1978); [Voge v. Schnaidt](#), 2001 ND 174, 635 N.W.2d 161 (N.D. 2001).

³ [C.J. Hendry Co. v. Moore](#), 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943).

⁴ [Madruza v. Superior Court of State of Cal. in and for San Diego County](#), 346 U.S. 556, 74 S. Ct. 298, 98 L. Ed. 290 (1954); [The Moses Taylor](#), 71 U.S. 411, 18 L. Ed. 397, 1866 WL 9470 (1866).

⁵ Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 59 S. Ct. 262, 83 L. Ed. 265 (1939); Panama R. Co. v. Vasquez, 271 U.S. 557, 46 S. Ct. 596, 70 L. Ed. 1085 (1926).

⁶ § 84.

⁷ Phillips v. Sea Tow/Sea Spill of Savannah, 276 Ga. 352, 578 S.E.2d 846 (2003).

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The common law, as it existed in this country at the time of the adoption of the U.S. Constitution, recognized a remedy in rem in cases of forfeiture, and it must therefore be considered a remedy falling within the scope of the saving to suitors clause.¹

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¹ [C.J. Hendry Co. v. Moore](#), 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943).

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